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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, [redacted] 1959

No. 466 7

LEON WOLFE, GEORGE SIMKINS, JR., JOSEPH STURDIVENT, ET AL., APPELLANTS,

vs.

STATE OF NORTH CAROLINA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

FILED OCTOBER 22, 1958

JURISDICTION POSTPONED JANUARY 12, 1959

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. 466

LEON WOLFE, GEORGE SIMKINS, JR., JOSEPH STURDIVENT, ET AL., APPELLANTS,

vs.

STATE OF NORTH CAROLINA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

INDEX

	Original	Print
Record from the Superior Court of Guilford County, North Carolina	1	1
Organization of the Court	1	2
Proceedings in the Municipal-County Court, Greensboro, North Carolina	2	2
Affidavit, warrant for arrest, bond and judgment (Cooke case)	2	2
Affidavit, warrant for arrest, bond and judgment (Wolfe case)	5	6
Affidavit, warrant for arrest, bond and judgment (Simpkins case)	8	10
Affidavit, warrant for arrest, bond and judgment (Studivent case)	11	14
Affidavit, warrant for arrest, bond and judgment (Murray case)	14	18
Affidavit, warrant for arrest, bond and judgment (Herring case)	18	22

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	Original	Print
Record from the Superior Court of Guilford County	22	26
Plea, jury and verdict	22	26
Judgment and appeal entries	22	26
Statement of the case on appeal	27	31
Motion to quash warrants	28	32
Exhibit A—Indictments	33	36
Exhibit B—Order allowing Nol Pros	39	42
State's evidence	39	43
Testimony of Clyde Bass—		
direct	39	43
cross	41	44
direct	42	45
cross	44	47
redirect	45	48
W. J. Darby—		
direct	46	49
Ernest Edwards— (recalled)—		
redirect	47	50
recross	47	50
redirect	47	50
Defendants' evidence	48	51
Testimony of George Simkins, Jr.—		
direct	48	51
cross	49	52
redirect	51	54
Hazel Burch—		
direct	52	55
Defendants' exhibits		
No. 1—Lease by Board of Trustees of the Greensboro City Administrative Unit to Gillespie Park Golf Club, Inc., dated April 19, 1949	52	56
No. 2—Extension of lease, dated April 20, 1955	58	61
No. 3—Deed by Mrs. Zella Allred to City of Greensboro, dated February 13, 1940	59	63
No. 4—Deed by Laura W. Cone and Edward Toner Cone, Commissioners, to City of Greensboro, dated June 30, 1941	62	65

	Original	Print
Record from the Superior Court of Guilford County—Continued		
Defendants' evidence—Continued		
Defendants' exhibits—Continued		
No. 5—Deed by Eugene G. Shaw, Commissioner, to City of Greensboro, dated December 6, 1946	64	67
Testimony of Myrtle D. Cobb—direct	69	71
John R. Hughes—direct	70	72
Defendants' exhibit No. 8—By-laws of the Gillespie Park Golf Club, Inc.	70	72
Testimony of John R. Hughes—cross	74	75
redirect	76	77
George Simkins, Jr.—redirect	77	79
Statement of Mr. John R. Hughes	77	79
Charge of the Court	78	80
Motion to set aside verdict and denial thereof	91	91
Assignments of error	98	97
Stipulations	106	106
Proceedings in the Supreme Court of North Carolina	147	107
Opinion, Rodman, J.	148	107
Judgment	162	118
Motion and affidavit suggesting diminution of the record	169	119
Answer to motion suggesting diminution of the record	172	122
Reply to motion to dismiss	175	125
Motion to take judicial notice	182	128
Notice of appeal to the Supreme Court of the United States	185	132
Clerk's certificate	191	138
Order postponing jurisdiction	193	140

[fol. 1]

IN THE SUPERIOR COURT OF GUILFORD COUNTY
NORTH CAROLINA

STATE

v.

PHILLIP COOKE

STATE

v.

LEON WOLFE

STATE

v.

GEORGE SIMKINS, JR.

STATE

v.

JOSEPH STURDIVENT

STATE

v.

SAMUEL MURRAY

STATE

v.

ELIJAH H. HERRING

Before Fountain, Special J., February 3, 1958, Criminal Term, Guilford Superior Court (Greensboro Division).
Defendants Appealed.

ORGANIZATION OF COURT

Be It Remembered that on Monday, February 3, 1958, was begun and holden a two-weeks regular term of the Superior Court of Guilford County, North Carolina, [fol. 2] (Greensboro Division) for the trial of Criminal cases. Honorable George M. Fountain, Tarboro, N. C., Judge Presiding; Honorable Horace R. Kornegay, Greensboro, N.C., Solicitor; Honorable Claude K. Josey, Greensboro, N. C., Assistant Solicitor. Mrs. Billie Boyle, Court Reporter.

(Commission to Judge Fountain, one of the Special Judges of the Superior Courts, to hold said term of Court appears in original transcript of record.)

Affidavit, Warrant for Arrest, Bond and Judgment (Cooke Case)

IN THE MUNICIPAL-COUNTY COURT

CRIMINAL DIVISION

No. 19679

STATE OF NORTH CAROLINA

v.

PHILIP COOKE

AFFIDAVIT

Ernest Edwards, being duly sworn, deposes and says that Philip Cooke, on or about the 7 day of December, 1955, with force and arms, at and in Guilford County, except High Point, Deep River and Jamestown townships, did unlawfully and willfully enter and trespass upon the premises of Gillespie Park Club, Inc., after having been forbidden to enter said premises, and not having a license to enter said premises at Troy Street, Greensboro, North

Carolina, against the statute in such case made and provided and against the peace and dignity of the State and in violation of City Ordinance, Chapter ....., Section .....

/s/ Ernest Edwards

Sworn to and subscribed before me, this the 2 day of December, 1957. /s/ C. Stephenson, Asst. Clerk of the Municipal-County Court.

IN THE MUNICIPAL-COUNTY COURT
CRIMINAL DIVISION

[fol. 3]

STATE OF NORTH CAROLINA

v.

PHILIP COOKE

WARRANT FOR ARREST

To the Chief of Police of the City of Greensboro, the Sheriff of Guilford County, or other lawful officer, Greeting:

For the reasons stated in the foregoing affidavit, which is hereby made a part of this warrant, you are hereby commanded forthwith to arrest the said Philip Cooke and him have before his Honor, the judge of the Municipal-County Court, City Hall, Greensboro, North Carolina, then and there to answer said charges and be dealt with according to law.

Witness my hand, this the 2 day of December, 1957.

John W. Kinsey, Clerk, Municipal-County Court, By /s/ C. Stephenson, Deputy Clerk Asst.

State of North Carolina

To the Chief of Police, or any Policeman of the City of Greensboro or any lawful officer of Guilford County, Greeting:

You are hereby commanded to subpoena as witness for the State in the case of State vs. ....., et al., Ernest Edwards, 508 Willowbrook Dr.
and for the defendant .....
and such other witness as .....
may demand, to appear before the Municipal-County Court, in the City Hall, Greensboro, N. C., on the ..... day of ....., 19....., 9:30 o'clock A.M., and not depart the Court without leave.

This ..... day of ....., 19.....

John W. Kinsey, Clerk, Municipal-County Court.

BOND

We acknowledge ourselves indebted to the State of North Carolina in the sum of $200.00 Two Hundred Dollars and 00/100—Dollars.

The condition of the above recognizance is such that if [fol. 4] Philip Cooke, the defendant above named, shall appear before the Municipal-County Court in the City Hall, Greensboro, N. C., on the 16th day of December, 1957, at 9:30 o'clock A.M., and answer the above named charge, and not depart the Court without leave and shall not depart the Court until he fully complies with the judgment of the Court, then this recognizance to be void, otherwise to remain in full force and effect.

This 2nd day of December, 1957.

/s/ Philip Cooke (Seal)

/s/ George C. Simkins (Seal)

Subscribed before me, the day and year above written.
/s/ C. Stephenson.

North Carolina—Guilford County.

George C. Simkins, 803½ E. Market, one of the subscribers to the above undertaking, being duly sworn, deposes and says: That he is a resident and freeholder in this State, and is worth the sum of $400.00 over and above all his debts, liabilities and real and personal property exempt from execution.

/s/ George C. Simkins

Subscribed and sworn to before me, this the 2nd day of December, 1957. John W. Kinsey, Clerk, Municipal-County Court, By: /s/ C. Stephenson, Deputy Clerk.

Docket No. B 7079
Case No. 7516

Warrant No. 19679 CM.
State A—
Philip Cooke
508 Boyd St

Warrant for Trespassing

Issued 2 day of December, 1957;
Rec'd 2 day of December, 1957;
Exec'd 2 day of December, 1957.
Paul B. Calhoun, Chief of Police.
/s/ M. Bailey Police.

[fol. 5]

JUDGMENT

Plea Not Guilty.

The Court, after hearing all the evidence in the case, adjudges defendant Guilty and imposes the following judgment

State Road		30 days Month
City Hall		
Any County Institution	X	

Fine	$.1
Court Costs	$16.50
Board and Meals	$
Capias	$
Total Court Costs	$17.50

Appeal Rec 6-58.

Deputy Clerk, Municipal-County
Court City of Greensboro, N. C.
$200.00 Bond.

Affidavit, Warrant for Arrest, Bond and Judgment (Wolfe Case)

IN THE MUNICIPAL-COUNTY COURT

CRIMINAL DIVISION

No. 19680

STATE OF NORTH CAROLINA

v.

LEON WOLFE

AFFIDAVIT

Ernest Edwards, being duly sworn, deposes and says that Leon Wolfe, on or about the 7 day of December, 1955, with

force and arms, at and in Guilford County, except High Point, Deep River and Jamestown townships, did unlawfully and willfully enter and trespass upon the premises of Gillespie Park Club, Inc., after having been forbidden to enter said premises, and not having a license to enter said premises at Troy Street, Greensboro, North Carolina, against the statute in such case made and provided and against the peace and dignity of the State and in violation of City Ordinance, Chapter ....., Section .....

/s/ Ernest Edwards

Sworn to and subscribed before me, this the 2 day of December, 1957. /s/ C. Stephenson, Deputy Clerk of the Municipal-County Court Asst.

[fol. 6]

IN THE MUNICIPAL-COUNTY COURT

CRIMINAL DIVISION

STATE OF NORTH CAROLINA

v.

LEON WOLFE

WARRANT FOR ARREST

To the Chief of Police of the City of Greensboro, the Sheriff of Guilford County, or other lawful officer, Greeting:

For the reasons stated in the foregoing affidavit, which is hereby made a part of this warrant, you are hereby commanded forthwith to arrest the said Leon Wolfe and him have before his Honor, the judge of the Municipal-County Court, City Hall, Greensboro, North Carolina, then and there to answer said charges and be dealt with according to law.

Witness my hand, this the 2 day of December, 1957.

John W. Kinsey, Clerk, Municipal-County Court, By: /s/ C. Stephenson, Deputy Clerk, Asst.

State of North Carolina

To the Chief of Police, or any Policeman of the City of Greensboro or any lawful officer of Guilford County, Greeting:

You are hereby commanded to subpoena as witness for the State in the case of State vs. ....., et al., Ernest Edwards, 508 Willowbrook Dr., City
and for the defendant: .....
and such other witness as .....
may demand, to appear before the Municipal-County Court, in the City Hall, Greensboro, N. C., on the ..... day of ....., 19....., 9:30 o'clock A.M., and not depart the Court without leave.

This ..... day of ....., 19.....

John W. Kinsey, Clerk, Municipal-County Court.

[fol. 7]

BOND

We acknowledge ourselves indebted to the State of North Carolina in the sum of $200.00 Two Hundred Dollars and 00/100—Dollars.

The condition of the above recognizance is such that if Leon Wolfe, the defendant above named, shall appear before the Municipal-County Court in the City Hall, Greensboro, N. C., on the 16th day of December, 1957, at 9:30 o'clock A.M., and answer the above named charge, and not depart the Court without leave and shall not depart the Court until he fully complies with the judgment of the Court, then this recognizance to be void, otherwise to remain in full force and effect.

This 2nd day of December, 1957.

/s/ Leon Wolfe Seal

/s/ George C. Simkins Seal

Subscribed before me, the day and year above written.
/s/ C. Stephenson.

North Carolina—Guilford County.

George C. Simkins, 803½ E. Market Street, one of the subscribers to the above undertaking, being duly sworn, deposes and says: That he is a resident and freeholder in this State, and is worth the sum of $400.00 over and above all his debts, liabilities and real and personal property exempt from execution.

/s/ George C. Simkins

Subscribed and sworn to before me, this the 2nd day of December, 1957. John W. Kinsey, Clerk, Municipal-County Court, By: /s/ C. Stephenson, Deputy Clerk.

12-16-57

Docket No. B 7080
Case No. 75616

Warrant No. 19680 A CM

State A—
LEON WOLFE
Warrant for Trespassing

[fol. 8] Issued 2 day of December, 1957;
Rec'd 2 day of December, 1957;
Exec'd 2 day of December, 1957.
Paul B. Calhoun, Chief of Police.
/s/ M. Bailey, Police.

JUDGMENT

Plea Not Guilty.

The Court, after hearing all the evidence in the case adjudges defendant Guilty and imposes the following judgment:

State Roads 30 days Month
X Any County Institution

Fine	$ 1
Court Costs	$16.50
Board and Meals	$
Capias	$
Total Court Costs	$17.50

Appeal 1-6-58 Rec.

Deputy Clerk, Municipal-County
Court City of Greensboro, N. C.

~~$200 Bond.~~

Affidavit, Warrant for Arrest, Bond and Judgment (Simpkins Case)

IN THE MUNICIPAL-COUNTY COURT

CRIMINAL DIVISION

No. 19681

STATE OF NORTH CAROLINA

v.

GEORGE SIMPKINS, JR.

AFFIDAVIT

Ernest Edwards, being duly sworn, deposes deposes (sic) and says that George Simpkins, Jr., on or about the 7 day of December, 1955, with force and arms, at and in Guilford County, except High Point, Deep River and Jamestown townships, did unlawfully and willfully enter and trespass upon the premises of Gillespie Park Club, Inc., after having been forbidden to enter said premises, and not having a license to enter said premises at Troy Street, Greensboro, North Carolina, against the statute in such case made and [fol. 9] provided and against the peace and dignity of the State and in violation of City Ordinance, Chapter ....., Section .....

/s/ Ernest Edwards

Sworn to and subscribed before me, this the 2 day of December, 1957. /s/ C. Stephenson, Deputy Clerk of the Municipal-County Court Asst.

IN THE MUNICIPAL-COUNTY COURT

CRIMINAL DIVISION

STATE OF NORTH CAROLINA

V.

GEORGE SIMPKINS

WARRANT FOR ARREST

To the Chief of Police of the City of Greensboro, the Sheriff of Guilford County, or other lawful officer, Greeting:

For the reasons stated in the foregoing affidavit, which is hereby made a part of this warrant, you are hereby commanded forthwith to arrest the said George Simpkins, Jr., and him have before his Honor, the judge of the Municipal-County Court, City Hall, Greensboro, North Carolina, then and there to answer said charges and be dealt with according to law.

Witness my hand, this the 2 day of December, 1957.

John W. Kinsey, Clerk, Municipal-County Court, By: C. Stephenson (s), Deputy Clerk Asst.

State of North Carolina

To the Chief of Police, or any Policeman, of the City of Greensboro or any lawful officer of Guilford County, Greeting:

You are hereby commanded to subpoena as witness for the State in the case of State vs. ..... et al., Ernest Edwards, 508 Willowbrook Dr., City, and for the

defendant: ..... and such other witness as ..... may demand, to appear before the Municipal-County Court, in the City Hall, Greensboro, N. C., on the ..... day of ....., 19....., 9:30 {fol. 10} o'clock A.M., and not depart the Court without leave.

This ..... day of ....., 19.....

John W. Kinsey, Clerk, Municipal-County Court.

BOND

We acknowledge ourselves indebted to the State of North Carolina in the sum of $200.00 Two Hundred Dollars and 00/100—Dollars.

The condition of the above recognizance is such that if George C. Simkins, Jr., the defendant above named, shall appear before the Municipal-County Court in the City Hall, Greensboro, N. C., on the 16th day of December, 1957, at 9:30 o'clock A.M., and answer the above named charge, and not depart the Court without leave and shall not depart the Court until he fully complies with the judgment of the Court, then this recognizance to be void, otherwise to remain in full force and effect.

This 2nd day of December, 1957.

/s/ George Simkins, Jr. Seal

/s/ George C. Simkins Seal

Subscribed before me, the day and year above written.
/s/ C. Stephenson.

North Carolina—Guilford County.

George C. Simkins, 803½ E. Market Street, one of the subscribers to the above undertaking, being duly sworn, deposes and says: That he is a resident and freeholder in this State, and is worth the sum of $400.00 over and above all his debts, liabilities and real and personal property exempt from execution.

/s/ George C. Simkins

Subscribed and sworn to before me, this the 2nd day of December, 1957. John W. Kinsey, Clerk, Municipal-County Court, By /s/ C. Stephenson, Deputy Clerk.

12-16-57

Docket No. B 7081
Case No. 75616

Warrant No. 19681

[fol. 11] State A—
George Simpkins, Jr., 215 N Dudley St
Warrant for Trespassing

Issued 2 day of December, 1957;
Rec'd 2 day of December, 1957;
Exc'd 2 day of December, 1957.
PAUL B. CALHOUN, Chief of Police
/s/ B. L. Ferguson, Police.

JUDGMENT

Plea Not Guilty.

The Court, after hearing all the evidence in the case, adjudges the defendant Guilty and imposes the following judgment:

State Roads 30 days Month
X Any County Institution

Fine	$ 1
Court Costs	$16.50
Board and Meals	$
Capias	$
Total Court Costs	$17.50
Appeal Rec	1-6-58

Deputy Clerk, Municipal-County Court City of Greensboro, N. C.
$200.00 Bond.

Affidavit, Warrant for Arrest, Bond and Judgment (Studivent Case)

IN THE MUNICIPAL-COUNTY COURT

CRIMINAL DIVISION

No. 19682

STATE OF NORTH CAROLINA

v.

JOSEPH STUDIVENT

AFFIDAVIT

Ernest Edwards, being duly sworn, deposes and says that Joseph Studivent, on or about the 7 day of December, 1955, with force and arms, at and in Guilford County, except High Point, Deep River and Jamestown townships, did unlawfully and willfully enter and trespass upon the premises of Gillespie Park Club, Inc., after having been forbidden to enter said premises, and not having a license to [fol. 12] enter said premises at Troy Street, Greensboro, North Carolina, against the statute in such case made and provided and against the peace and dignity of the State and in violation of City Ordinance, Chapter ....., Section .....

/s/ Ernest Edwards

Sworn to and subscribed before me, this the 2 day of December, 1957. /s/ C. Stephenson, Deputy Clerk of the Municipal-County Court Asst.

IN THE MUNICIPAL-COUNTY COURT

CRIMINAL DIVISION

STATE OF NORTH CAROLINA

v.

JOSEPH STUDIVENT

WARRANT FOR ARREST

To the Chief of Police of the City of Greensboro, the Sheriff of Guilford County, or other lawful officer, Greeting:

For the reasons stated in the foregoing affidavit, which is hereby made a part of this warrant, you are hereby commanded forthwith to arrest the said Joseph Studivent and him have before his Honor, the judge of the Municipal-County Court, City Hall, Greensboro, North Carolina, then and there to answer said charges and be dealt with according to law.

Witness my hand, this the 2 day of December, 1957.

John W. Kinsey, Clerk, Municipal-County Court, By: /s/ C. Stephenson, Deputy Clerk Asst.

STATE OF NORTH CAROLINA

To the Chief of Police, or any Policeman, of the City of Greensboro or any lawful officer of Guilford County, Greeting:

You are hereby commanded to subpoena as witness for the State in the case of State v. ....., et al., ...: Ernest Edwards, 508 Willowbrook Dr., City, ...

[fol. 13] and for the defendant ..... and such other witness as ..... may demand, to appear before the Municipal-County Court, in the City Hall, Greensboro, N. C., on the ..... day of ....., 19...., 9:30 o'clock A. M., and not depart the Court without leave.

This ..... day of ....., 19.....

John W. Kinsey, Clerk, Municipal County Court.

BOND

We acknowledge ourselves indebted to the State of North Carolina in the sum of $200.00 Two Hundred Dollars and 00/100—Dollars.

The condition of the above recognizance is such that if Joseph Sturdivent, the defendant above named, shall appear before the Municipal-County Court in the City Hall, Greensboro, N. C., on the 16th day of December, 1957, at 9:30 o'clock A. M., and answer the above named charge, and not depart the Court without leave and shall not depart the Court until he fully complies with the judgment of the Court, then this recognizance to be void, otherwise to remain in full force and effect.

This 2nd day of December, 1957.

/s/ Joseph Sturdivent Seal

/s/ George C. Simkins Seal

Subscribed before me, the day and year above written.
/s/ C. Stephenson

North Carolina—Guilford County.

George C. Simkins, 803½ E. Market Street, one of the subscribers to the above undertaking, being duly sworn, deposes and says: That he is a resident and freeholder in this State, and is worth the sum of $400.00 over and above all his debts, liabilities and real and personal property exempt from execution.

/s/ George C. Simkins

Subscribed and sworn to before me, this the 2nd day of December, 1957. John W. Kinsey, Clerk, Municipal-County [fol. 14] Court, By: /s/ C. Stephenson, Deputy Clerk.

12-16-57

Docket No. B 7082
Case No. 75616

Warrant No. 19682

State A—
Joseph Studivent, 220 N Booker St
Warrant for Trespassing

Issued 2 day of December, 1957;
Rec'd 2 day of December, 1957;
Exc'd 2 day of December, 1957.
Paul R. Calhoun, Chief of Police
/s/ B. L. Ferguson, Police.

JUDGMENT

Plea Not Guilty.

The Court, after hearing all the evidence in the case, adjudges defendant Guilty and imposes the following judgment:

State Roads 30 days Month
X Any County Institution

Fine	$ 1
Court Costs	$16.50
Board and Meals	$
Capias	$
Total Court Costs	$17.50

Appeal Rec 1-6-58

Deputy Clerk, Municipal-County
Court, City of Greensboro, N. C.

$200.00 Bond.

Affidavit, Warrant for Arrest, Bond and Judgment (Murray Case)

IN THE MUNICIPAL-COUNTY COURT

CRIMINAL DIVISION

No. 19683

STATE OF NORTH CAROLINA

v.

SAMUEL MURRAY

AFFIDAVIT

Ernest Edwards, being duly sworn, deposes and says [fol. 15] that Samuel Murray, on or about the 7 day of December, 1955, with force and arms, at and in Guilford County, except High Point, Deep River and Jamestown townships, did unlawfully and willfully enter and trespass upon the premises of Gillespie Park Golf Club, Inc., after having been forbidden to enter said premises, and not having a license to enter said premises at Troy Street, Greensboro, North Carolina, against the statute in such case made and provided and against the peace and dignity of the State and in violation of City Ordinance, Chapter ...., Section .....

/s/ Ernest Edwards

Sworn to and subscribed before me, this the 2 day of December, 1957. /s/ C. Stephenson, Deputy Clerk of the Municipal-County Court. Asst.

IN THE MUNICIPAL-COUNTY COURT

CRIMINAL DIVISION

STATE OF NORTH CAROLINA

v.

SAMUEL MURRAY

WARRANT FOR ARREST

To the Chief of Police of the City of Greensboro, the Sheriff of Guilford County, or other lawful officer, Greeting:

For the reasons stated in the foregoing affidavit, which is hereby made a part of this warrant, you are hereby commanded forthwith to arrest the said Samuel Murray and him have before his Honor, the Judge of the Municipal-County Court, City Hall, Greensboro, North Carolina, then and there to answer said charges and be dealt with according to law.

Witness my hand, this the 2 day of December, 1957.

John W. Kinsey, Clerk, Municipal-County Court, By: /s/ C. Stephenson, Deputy Clerk Asst.

State of North Carolina

To the Chief of Police, or any Policeman, of the City of Greensboro or any lawful office, of Guilford County, Greet [fol. 16] ing:

You are hereby commanded to subpoena as witness for the State in the case of State vs. ....., et al., ..., Ernest Edwards, 508 Willowbrook Dr., City, ... and for the defendant ..... and such other witness as ..... may demand, to appear before the Municipal-County Court, in the City Hall, Greensboro, N. C., on the ..... day of ....., 19..., 9:30 o'clock A. M., and not depart the Court without leave.

This ..... day of ....., 19....

John W. Kinsey, Clerk, Municipal-County Court.

Bond

We acknowledge ourselves indebted to the State of North Carolina in the sum of $200.00 Two Hundred Dollars and 00/100—Dollars.

The condition of the above recognizance is such that if Samuel Murray, the defendant above named, shall appear before the Municipal-County Court in the City Hall, Greensboro, N. C., on the 16th day of December, 1957, at 9:30 o'clock A. M., and answer the above named charge, and not depart the Court without leave and shall not depart the Court until he fully complies with the judgment of the Court, then this recognizance to be void, otherwise to remain in full force and effect.

This 2nd day of December, 1957.

/s/ Samuel Murray Seal

/s/ George C. Simkins, Sr. Seal

Subscribed before me, the day and year above written. /s/ C. Stephenson.

North Carolina—Guilford County.

George C. Simkins, Sr., 803½ E. Market Street, one of the subscribers to the above undertaking, being duly sworn, deposes and says: That he is a resident and freeholder in [fol. 17] this State, and is worth the sum of $400.00 over and above all his debts, liabilities and real and personal property exempt from execution.

/s/ George C. Simkins, Sr.

Subscribed and sworn to before me, this the 2nd day of December, 1957. John W. Kinsey, Clerk, Municipal-County Court By: /s/ C. Stephenson, Deputy Clerk.

12-16-57

Docket No. B 7083
Case No. 75616

Warrant No. 19683

State A—
Samuel Murray CM
118 Regan St
Warrant for Trespassing

Issued 2 day of December, 1957
Rec'd 2 day of December, 1957;
Exc'd 2 day of December, 1957.
Paul B. Calhoun, Chief of Police
/s/ B. L. Ferguson, Police.

JUDGMENT

Plea Not Guilty.

The Court, after hearing all the evidence in the case, adjudges defendant Guilty and imposes the following judgment:

State Roads 30 days Month
X Any County Institution

Fine	$ 1
Court Costs	$16.50
Board and Meals	$
Capias	$
Total Court Costs	$17.50

Appeal Rec. 1-6-58

Deputy Clerk, Municipal-County
Court City of Greensboro, N. C.

$200.00 Bond.

[fol. 18]

Affidavit, Warrant for Arrest, Bond and Judgment (Herring Case)

IN THE MUNICIPAL-COUNTY COURT

CRIMINAL DIVISION

No. 19684

STATE OF NORTH CAROLINA

v.

ELIJAH H. HERRING

AFFIDAVIT

Ernest Edwards, being duly sworn, deposes and says that Elijah H. Herring, on or about the 7 day of December, 1955, with force and arms, at and in Guilford County, except High Point, Deep River and Jamestown townships, did unlawfully and willfully enter and trespass upon the premises of Gillespie Park Golf Club, Inc., after having been forbidden to enter said premises, and not having a license to enter said premises at Troy Street, Greensboro, North Carolina, against the statute in such case made and provided and against the peace and dignity of the State and in violation of City Ordinance, Chapter ....., Section .....

/s/ Ernest Edwards

Sworn to and subscribed before me, this the 2 day of December, 1957. /s/ C. Stephenson, Deputy Clerk of the Municipal-County Court, Asst.

IN THE MUNICIPAL-COUNTY COURT

CRIMINAL DIVISION

STATE OF NORTH CAROLINA

v.

ELIJAH H. HERRING

WARRANT FOR ARREST

To the Chief of Police of the City of Greensboro, the Sheriff of Guilford County, or other lawful officer, Greeting:

For the reasons stated in the foregoing affidavit, which is hereby made a part of this warrant, you are hereby commanded forthwith to arrest the said Elijah H. Herring and him have before his Honor, the judge of the Municipal-County Court, City Hall, Greensboro, North Carolina, then and there to answer said charges and be dealt with according to law.

[fol. 19] Witness my hand, this the 2 day of December, 1957.

John W. Kinsey, Clerk, Municipal-County Court By: /s/ C. Stephenson, Deputy Clerk, Asst.

Docket No. B 7084 12-16-57
Case No. 75616

Warrant No. 19684

State A—
vs.
Elijah H. Herring CM 2101 Finley St
Warrant for Trespassing

Issued 2 day of December, 1957;
Rec'd 2 day of December, 1957;
Exe'd 2 day of December, 1957.
Paul B. Calhoun, Chief of Police
M. Bailey, Police.

JUDGMENT

Plea Not Guilty.

The Court, after hearing all the evidence in the case, adjudges defendant Guilty and imposes the following judgment:

State Roads 30 days Month
X Any County Institution

Fine	$ 1
Court Costs	$16.50
Board and Meals	$
Capias	$
Total Court Costs	$17.50

Bond $200.00

Deputy Clerk, Municipal-County
Court City of Greensboro, N. C.
Appeal Rec 1-6-58

BOND

We acknowledge ourselves indebted to the State of North Carolina in the sum of $200.00 Two Humdred Dollars and 00/100 Dollars.

The condition of the above recognizance is such that if Elijah H. Herring, the defendant above named, shall appear before the Municipal-County Court in the City Hall, Greensboro, N. C., on the 16th day of December, 1957, at 9:30 o'clock A. M., and answer the above named charge, [fol. 20] and not depart the Court without leave and shall not depart the Court until he fully complies with the judgment of the Court, then this recognizance to be void, otherwise to remain in full force and effect.

This 2nd day of December, 1957.

/s/ Elijah H. Herring Seal

/s/ George C. Simkins Seal

Subscribed before me, the day and year above written.
/s/ C. Stephenson.

North Carolina--Guilford County:

George C. Simkins, 803½ E. Market Street, one of the subscribers to the above undertaking, being duly sworn, deposes and says: That he is a resident and freeholder in this State, and is worth the sum of $400.00 over and above all his debts, liabilities and real and personal property exempt from execution.

/s/ George C. Simkins

Subscribed and sworn to before me, this the 2nd day of December, 1957. John W. Kinsey, Clerk, Municipal-County Court By: /s/ C. Stephenson, Deputy Clerk.

12-16-57

State of North Carolina

To the Chief of Police, or any Policeman, of the City of Greensboro or any lawful officer of Guilford County.

Greeting:

You are hereby commanded to subpoena as witness for the State in the case of State vs. Elijah H. Herring, et al.,
Ernest Edwards, 508 Willowbrook Dr., City
W. J. Darby, Clyde Bass, 1502 Glenwood Ave.

[fol. 21] and for the defendant:

.....

and such other witness as .....
may demand, to appear before the Municipal-County Court, in the City Hall, Greensboro, N. C., on the ..... day of ....., 19...., 9:30 o'clock A. M., and not depart the Court without leave.

This ..... day of ....., 19.....

John W. Kinsey, Clerk, Municipal-County Court.

[fol. 22]

IN SUPERIOR COURT OF GUILFORD COUNTY

PLEA, JURY AND VERDICT

T. D. 7120, State v. Phillip Cooke, Elijah H. Herring, Samuel Murray, George Simkins, Jr., Joseph Sturdivent, Leon Wolfe—Trespassing.

The defendants are present in Court, each represented by the following Attorneys: William A. Marsh, Esq., of Durham, North Carolina, Harold L. Kennedy and Mrs. Harold L. Kennedy of Winston-Salem, North Carolina, through whom each tenders a plea of Not Guilty. All cases against each defendant are consolidated for the purpose of trial. The following jury was sworn and impaneled, to-wit: C. Clifton Davis and others (naming them).

The Jury returns its Verdict: Guilty as charged in the warrant, as to each defendant individually.

IN SUPERIOR COURT OF GUILFORD COUNTY

JUDGMENT AND APPEAL ENTRIES

Monday Morning, February 10, 1958.

T. D. 7120—State v. Phillip Cooke, Elijah H. Herring, Samuel Murray, George Simpkins, Jr., Joseph Sturdivent, Leon Wolfe—Trespassing.

The defendants are each present in Court with counsel, and having heretofore been convicted, the following judgment is entered:

Phillip Cooke—It is the Judgment of the Court that the defendant be confined in the common jail of Guilford County for a period of fifteen (15) days.

Elijah H. Herring—It is the Judgment of the Court that the defendant be confined in the common jail of Guilford County for a period of fifteen (15) days.

[fol. 23] Samuel Murray—It is the Judgment of the Court that the defendant be confined in the common jail of Guilford County for a period of fifteen (15) days.

George Simkins, Jr.—It is the judgment of the Court that the defendant be confined in the common jail of Guilford County for a period of fifteen (15) days.

Joseph Sturdivent—It is the judgment of the Court that the defendant be confined in the common jail of Guilford County for a period of fifteen (15) days.

Leon Wolfe—It is the Judgment of the Court that the defendant be confined in the common jail of Guilford County for a period of fifteen (15) days.

Appeal Entries

State

v.

Phillip W. Cooke

Upon the rendition of the verdict by the jury, the defendant Phillip W. Cooke, in apt time moves to set the verdict aside and to be granted a new trial, said motion being made because the verdict is contrary to the greater weight of the evidence, because of errors committed during the progress of the trial, and such other errors as have been assigned and also to be assigned. The motion upon each ground is overruled, to which the defendant Phillip W. Cooke in apt time objects and excepts.

Judgment is signed as appears of record. To the signing of which and to the judgment as signed, the defendant Phillip W. Cooke, in apt time, objects, excepts and appeals to the Supreme Court. Notice of appeal is given in open court and further notice waived. The defendant Phillip W. Cooke is allowed 40 days within which to prepare and serve statement of case on appeal. The State of North Carolina, ap- [fol. 24] pellee, is allowed ten days thereafter within which to serve countercase or exceptions. Appearance bond is set in the sum of $200.00. Appeal bond in the sum of $100.00 adjudged sufficient.

This 10th day of February 1958.

George M. Fountain, Judge Presiding.

STATE

v.

GEORGE SIMKINS, JR.

Upon the rendition of the verdic by the jury, the defendant George Simkins, Jr. in apt time moves to set the verdict aside and to be granted a new trial, said motion being made because the verdict is contrary to the greater weight of the evidence, because of errors committed during the progress of the trial, and such other errors as have been assigned and also to be assigned. The motion upon each ground is overruled, to which the defendant George Simkins, Jr. in apt time objects and excepts.

Judgment is signed as appears of record. To the signing of which and to the judgment as signed, the defendant George Simkins, Jr. in apt time objects, excepts and appeals to the Supreme Court. Notice of appeal is given in open court and further notice waived. The defendant George Simkins, Jr. is allowed 40 days within which to prepare and serve statement of case on appeal. The State of North Carolina, appellee, is allowed ten days thereafter within which to serve countercase or exceptions. Appearance Bond is set in the sum of $200.00. Appeal Bond in the sum of $100.00 adjudged sufficient.

George M. Fountain, Judge Presiding.

STATE

v.

ELIJAH HERRING

Upon the rendition of the verdict by the jury, the defen- [fol. 25] dant Elijah Herring in apt time moves to set the verdict aside and to be granted a new trial, said motion being made because the verdict is contrary to the greater weight of the evidence, because of errors committed during the progress of the trial, and such other errors as have been assigned and also to be assigned. The motion

upon each ground is overruled, to which the defendant Elijah Herring in apt time objects and excepts.

Judgment is signed as appears of record. To the signing of which and to the judgment as signed, the defendant Elijah Herring in apt time objects, excepts and appeals to the Supreme Court. Notice of appeal is given in open court and further notice waived. The defendant Elijah Herring is allowed forty days within which to prepare and serve statement of case on appeal. The State of North Carolina, appellee, is allowed ten days thereafter within which to serve countercase or exceptions. Appearance Bond is set in the sum of $200.00. Appeal bond in the sum of $100.00 adjudged sufficient.

This 10th day of February 1958.

George M. Fountain, Judge Presiding.

STATE

v.

LEON WOLFE

Upon the rendition of the verdict by the jury, the defendant Leon Wolfe in apt time moves to set the verdict aside and to be granted a new trial, said motion being made because the verdict is contrary to the greater weight of the evidence, because of errors committed during the progress of the trial, and such other errors as have been assigned and also to be assigned. The motion upon each ground is overruled, to which the defendant Leon Wolfe in apt time objects and excepts.

Judgment is signed as appears of record. To the signing of which and to the judgment as signed, the defendant [fol. 26] Leon Wolfe in apt time objects, excepts and appeals to the Supreme Court. Notice of appeal is given in open court and further notice waived. The defendant Leon Wolfe is allowed forty days within which to prepare and serve statement of case on appeal. The State of North Carolina, appellee, is allowed ten days thereafter within which to serve countercase or exceptions. Appearance

Bond is set in the sum of $200.00. Appeal Bond in the sum of $100.00 adjudged sufficient.

This 10th day of February 1958.

George M. Fountain, Judge Presiding.

STATE

V.

JOSEPH STURDIVENT

Upon the rendition of the verdict by the jury, the defendant Joseph Sturdivent in apt time moves to set the verdict aside and to be granted a new trial, said motion being made because the verdict is contrary to the greater weight of the evidence, because of errors committed during the progress of the trial, and such other errors as have been assigned and also to be assigned. The motion upon each ground is overruled, to which the defendant Joseph Sturdivent in apt time objects and excepts.

Judgment is signed as appears of record. To the signing of which and to the judgment as signed, the defendant Joseph Sturdivent in apt time objects, excepts and appeals to the Supreme Court. Notice of appeal is given in open court and further notice waived. The defendant Joseph Sturdivent is allowed forty days within which to prepare and serve statement of case on appeal. The State of North Carolina, appellee, is allowed ten days thereafter within which to serve counter case or exceptions. Appearance Bond is set in the sum of $200.00. Appeal Bond in the sum of $100.00 adjudged sufficient.

This 10th day of February 1958.

George M. Fountain, Judge Presiding.

[fol. 27]

STATE

v.

SAMUEL MURRAY

Upon the rendition of the verdict by the jury, the defendant Samuel Murray in apt time moves to set the verdict aside and to be granted a new trial, said motion being made because the verdict is contrary to the greater weight of the evidence, because of errors committed during the progress of the trial, and such other errors as have been assigned and also to be assigned. The Motion upon each ground is overruled, to which the defendant Samuel Murray in apt time objects and excepts.

Judgment is signed as appears of record. To the signing of which and to the judgment as signed, the defendant Samuel Murray in apt time objects, excepts and appeals to the Supreme Court. Notice of appeal is given in open court and further notice waived. The defendant Samuel Murray is allowed forty days within which to prepare and serve statement of case on appeal. The State of North Carolina, appellee, is allowed ten days thereafter within which to serve countercase or exceptions. Appearance Bond is set in the sum of $200.00. Appeal Bond in the sum of $100.00 adjudged sufficient.

This 10th day of February, 1958.

George M. Fountain, Judge Presiding.

IN SUPERIOR COURT OF GUILFORD COUNTY

STATEMENT OF THE CASE ON APPEAL

This is a criminal trial on warrants charging the defendants with entering and trespassing upon the land of another, without license, having been forbidden to do so. The cases have been consolidated for trial; said warrants appearing in the record proper. The cases were tried February 6th, 7th and 10th 1958, before his Honor George M. [fol. 28] Fountain, the Judge presiding at the Criminal

Term of Superior Court of Guilford County, North Carolina, and the jury, and the following proceedings were had.

Appearances:

For the State: Hon. Horace R. Kornegay, Solicitor; Hon. Claude K. Josey, Assistant Solicitor.

For the Defendants: William A. Marsh, Jr., C. O. Pearson, Annie Brown Kennedy and Harold L. Kennedy.

Exception No. 1:

When these defendants, and each of them, were called and requested to plead to the charges as set forth in the warrant, the following Motion was made on behalf of each defendant and all of them. The Motion to Quash was first made in the County Municipal Court in Greensboro when the cases were called December 16, 1957, before any plea was entered by any of the defendants herein.

Mr. Kennedy: Motion to Quash Warrants:

IN SUPERIOR COURT OF GUILFORD COUNTY

MOTION TO QUASH

Now come the defendants, and each of them all being Negro citizens of Greensboro, North Carolina, through counsel, and make the following Motion:

That the warrants in the above-entitled cause charging these defendants, and each of them with simple trespass based on GS 14-134 be quashed for the reason that GS 14-134 is hereby being unconstitutionally applied to these defendants, on the following grounds:

1. The State of North Carolina in this prosecution is, contrary to the Supremacy Clause of the United States Constitution, attempting to make a crime out of specific [fol. 29] acts and conduct which both the United States District Court for the Middle District of North Carolina and the United States Court of Appeals for the Fourth

Circuit have specifically held to be protected by the Fourteenth Amendment to the Constitution of the United States. In support of this assertion the defendants show to the Court the following:

(a) Based upon the specific facts and conduct alleged by the State to be a crime in this case, these defendants brought Civil Action No. 1058 in the United States District Court for the Middle District of North Carolina, praying for a declaratory judgment and a decree enjoining the prosecution witnesses and the City of Greensboro and the Greensboro City Board of Education from interfering with the defendants and all other Negroes similarly situated from playing golf on the Gillespie Park Golf Course.

(b) A full hearing was held before United States District Judge Johnson J. Hayes, who on April 24, 1957, found specifically that the prosecuting witnesses and the City of Greensboro had refused to permit these defendants to play golf "primarily because of their color" (Finding of Fact #33), and concluded as a matter of law that these defendants "and other Negroes similarly situated cannot be denied on account of race, the equal privileges to the park, notwithstanding the lease." In addition to his Findings of Fact and Conclusion of Law, Judge Hayes filed an opinion in the case and entered a "decree and injunction" enjoining the prosecuting witnesses and the City of Greensboro and the Greensboro City Board of Education from interfering with these defendants in playing golf on the Gillespie Park Golf Course. The prosecuting witnesses and the City of Greensboro appealed and this decree was subsequently affirmed by the United States Court of Appeals for the Fourth Circuit.

[fol. 30] (c) These defendants have subpoenaed the Clerk of the United States District Court for the Middle District of North Carolina to bring to this trial the full record and judgment roll in said case and respectfully request an opportunity to offer this evidence upon the hearing of this motion.

(d) Defendants respectfully urge the Court to receive and consider the record and judgment roll in the Federal case and after such consideration to estop the State and the

prosecuting witnesses from proceeding further with this prosecution. To permit this prosecution to proceed would be in effect to nullify and render ineffectual the judgment and decree of the United States Courts contrary to the Supremacy Clause of the United States Constitution and such prosecution would violate the rights of these defendants and laws of the United States, including the Fourteenth Amendment.

2. Defendants further show to the Court that there is now pending in the Superior Court of Guilford County an indictment by the Grand Jury charging the same identical crime to which the defendants are charged in this action. In this connection, defendants respectfully show to the Court that these defendants were tried once before on these identical facts and convicted and judgment was arrested by the Supreme Court of North Carolina in *State* v. *Cooke*, 246 NC 518 and that the Supreme Court held the following with regard to any further prosecution: "Defendants may, of course, now be tried under the original warrants since the Court was without authority to allow the Amendment changing the crime charged; *or they may be tried on bills found in the Superior Court for the crime attempted to be charged by the amendment.*" (Emphasis added)

Defendants respectfully urge that these methods of pro-[fol. 31] cedure laid down by the Supreme Court are the only methods of procedure and the State undertook to proceed by following the second alternative, i.e., having indictments found in the Superior Court, that when the case was called for trial, the Solicitor took a nol pros with leave, which in effect continues the case in this Court. *State* v. *Smith*, 129 NC 546, *State* v. *Williams*, 151 NC 660. Because of the pendency of the indictments defendants submit that the warrants should be quashed.

Defendants further respectfully submit that the procedure taken by the prosecution in drawing new warrants was not authorized by the Supreme Court when it arrested judgment in the former case and for this reason these warrants should be quashed.

3. Defendants further urge the Court to quash the warrants in this case for the reason that to require the defendants to stand trial upon these warrants would be to place these defendants in double jeopardy of their liberty in violation of the Fifth Amendment to the Constitution of the United States as incorporated into the Fourteenth Amendment to the Constitution insofar as basic liberties are concerned. In the recent case of *Green* v. *United States*, 355 US ...., 2 LEd 199, decided December 16, 1957, Mr. Justice Black, speaking for the Supreme Court of the United States said:

"The underlying idea, one that is deeply ingrained in at least the Anglo-American system of jurisprudence, is that the State with all its resources and power should not be allowed to make repeated attempts to convict an individual for an alleged offense, thereby subjecting him to embarrassment, expense and ordeal and compelling him to live in a continuing state of anxiety and insecurity, as well as [fol. 32] enhancing the possibility that even though innocent he may be found guilty."

There can be no question that the defendants have already been tried for the same identical acts and conduct charged to be a crime in this case and to make them stand trial again for the same acts and conduct would be double jeopardy by subjecting these defendants "to embarrassment, expense and ordeal."

4. Defendants further show to the Court that there is a fatal variance in these warrants on the same principal (sic) as in the case of *State* v. *Cooke*, 246 NC 548, in that these warrants charge that one of the defendants is George Simpkins whereas the person sought to be charged is George Simkins, Jr. as shown by said former case of *State* v. *Cooke*, supra, and there being a George Simkins and a George Simkins, Jr., both living in the City of Greensboro and a warrant against George Simpkins could not be a warrant against George Simkins, Jr. and any attempt to amend said warrant to read George Simkins, Jr. would be a fatal variance under the decision of the North Carolina Supreme Court in *State* v. *Cooke*, supra.

For the reasons hereinabove enumerated, we respectfully ask this Court to quash the warrants and dismiss this action.

This 6th day of February 1958.

Annie Brown Kennedy, Harold L. Kennedy, William A. Marsh, Jr., C. O. Pearson, Attorneys for Defendants.

[fol. 33]

EXHIBIT A—INDICTMENTS

INDICTMENT—TRESPASSING

STATE OF NORTH CAROLINA
GUILFORD COUNTY

SUPERIOR COURT

Oct. 21, Criminal Term A. D. 1957

The Jurors for the State Upon Their Oath present, That George Simpkins late of the County of Guilford on the 7th day of December A. D. 1955, with force and arms, at and in the County aforesaid, unlawfully and wilfully enter and trespass upon the premises of Gillespie Park Golf Club, Incorporated, after having been forbidden to enter said premises, and not having a license to enter said premises, against the form of the statute in such case made and provided and against the peace and dignity of the State.

(s) HORACE R. KORNEGAY, Solicitor.

(Back of Indictment):

No. 4761

STATE

v.

GEORGE SIMPKINS

INDICTMENT—Trespassing

....., Pros.

Witnesses:
Ernest Edwards
Clyde Bass
John A. Lee
x W. J. Darby

Those witnesses marked x sworn by the undersigned Foreman and examined before the Grand Jury and this bill found—a True Bill.

(s) A. C. DOGGETT
Foreman Grand Jury.

[fol. 34]

INDICTMENT—TRESPASSING

STATE OF NORTH CAROLINA
GUILFORD COUNTY

SUPERIOR COURT

Oct. 21, Criminal Term A. D. 1957

The Jurors for the State Upon Their Oath present, That Phillip Cooke late of the County of Guilford on the 7th day of December A. D. 1955, with force and arms, at and in the County aforesaid, unlawfully and wilfully enter and trespass upon the premises of Gillespie Park Golf Club, Incorporated, after having been forbidden to enter said premises, and not having a license to enter said premises, against the form of the statute in such case made and provided and against the peace and dignity of the State.

(s) HORACE R. KORNEGAY, Solicitor.

(Back of Indictment):

No. 4759

STATE

v.

PHILLIP COOKE

INDICTMENT—Trespassing

....., Pros.

Witnesses
Ernest Edwards
Clyde Bass
John A. Lee
x W. J. Darby

Those witnesses marked x sworn by the undersigned Foreman and examined before the Grand Jury and this bill found—a True Bill.

(s) A. C. DOGGETT
Foreman Grand Jury.

[fol. 35]

INDICTMENT—TRESPASSING

STATE OF NORTH CAROLINA
GUILFORD COUNTY

SUPERIOR COURT

Oct. 21, Criminal Term A. D. 1957

The Jurors for the State Upon Their Oath present, That Joseph Studivent late of the County of Guilford on the 7th day of December A. D. 1955, with force and arms, at and in the County aforesaid, unlawfully and wilfully enter and trespass upon the premises of Gillespie Park Golf Club, Incorporated, after having been forbidden to enter said premises, and not having a license to enter said premises, against the form of the statute in such case made and provided and against the peace and dignity of the State.

(s) HORACE R. KORNEGAY, Solicitor.

(Back of Indictment):

No. 4762

STATE

v.

JOSEPH STUDIVENT

INDICTMENT—Trespassing

....., Pros.

Witnesses:
Ernest Edwards
Clyde Bass
John A. Lee
x W. J. Darby

Those witnesses marked x sworn by the undersigned Foreman and examined before the Grand Jury and this bill found—a True Bill.

(s) A. C. DOGGETT
Foreman Grand Jury.

[fol. 36]

INDICTMENT—TRESPASSING

STATE OF NORTH CAROLINA
GUILFORD COUNTY

SUPERIOR COURT

Oct. 21, Criminal Term A. D. 1957

The Jurors for the State Upon Their Oath present, That Samuel Murray late of the County of Guilford on the 7th day of December A. D. 1955, with force and arms, at and in the County aforesaid, unlawfully and wilfully enter and trespass upon the premises of Gillespie Park Golf Club, Incorporated, after having been forbidden to enter said premises, and not having a license to enter said premises, against the form of the statute in such case made and provided and against the peace and dignity of the State.

(s) HORACE R. KORNEGAY, Solicitor.

(Back of Indictment):

No. 4763

STATE

v.

SAMUEL MURRAY

INDICTMENT—Trespassing

....., Pros.

Witnesses:
Ernest Edwards
Clyde Bass
John A. Lee
x W. J. Darby

Those witnesses marked x sworn by the undersigned Foreman and examined before the Grand Jury and this bill found—a True Bill.

(s) A. C. DOGGETT
Foreman Grand Jury.

[fol. 37]

INDICTMENT—TRESPASSING

STATE OF NORTH CAROLINA
GUILFORD COUNTY

SUPERIOR COURT

Oct. 21, Criminal Term A. D. 1957

The Jurors for the State Upon Their Oath present, That Elijah H. Herring late of the County of Guilford on the 7th day of December A. D. 1955, with force and arms, at and in the County aforesaid, unlawfully and wilfully enter and trespass upon the premises of Gillespie Park Golf Club, Incorporated, after having been forbidden to enter said premises, and not having a license to enter said premises, against the form of the statute in such case made and provided and against the peace and dignity of the State.

(s) HORACE R. KORNEGAY, Solicitor.

(Back of Indictment):

No. 4764

STATE

v.

ELIJAH H. HERRING

INDICTMENT—Trespassing

....., Pros.

Witnesses:
Ernest Edwards
Clyde Bass
John A. Lee
x W. J. Darby

Those witnesses marked x sworn by the undersigned Foreman and examined before the Grand Jury and this bill found—a True Bill.

(s) A. C. DOGGETT
Foreman Grand Jury.

[fol. 38]

INDICTMENT—TRESPASSING

STATE OF NORTH CAROLINA
GUILFORD COUNTY

SUPERIOR COURT

Oct. 21, Criminal Term A. D. 1957

The Jurors for the State Upon Their Oath present, That Leon Wolfe late of the County of Guilford on the 7th day of December A. D. 1955, with force and arms, at and in the County aforesaid, unlawfully and wilfully enter and trespass upon the premises of Gillespie Park Golf Club, Inc. after having been forbidden to enter said premises, and not having a license to enter said premises, against the form of the statute in such case made and provided and against the peace and dignity of the State.

(s) HORACE R. KORNEGAY, Solicitor.

(Back of Indictment):

No. 4760

STATE

v.

LEON WOLFE

INDICTMENT—Trespassing

....., Pros.

Witnesses:
Ernest Edwards
Clyde Bass
John A. Lee
x W. J. Darby

Those witnesses marked x sworn by the undersigned Foreman and examined before the Grand Jury and this bill found—a True Bill.

(s) A. C. DOGGETT
Foreman Grand Jury.

[fol. 39]

EXHIBIT B—ORDER ALLOWING NOL PROS

IN THE SUPERIOR COURT, GREENSBORO DIVISION

DECEMBER 2ND, 1957 TERM

STATE OF NORTH CAROLINA

v.

GEORGE SIMPKINS, JOSEPH STUDIVENT, SAMUEL MURRAY, ELIJAH H. HERRING, LEON WOLFE and PHILLIP COOKE
(Trespassing)

The Solicitor for the State makes a motion for a Nol Pros with leave in the above cases. The motion is allowed as to each of the defendants.

WALTER E. JOHNSON, JR.
Judge Presiding.

NORTH CAROLINA—GUILFORD COUNTY

Certified A True Copy of Original on File in this Office. This December 13, 1957.

(s) EVELYN E. STORY, Deputy C. S. C.

IN SUPERIOR COURT OF GUILFORD COUNTY

The following witnesses, being duly sworn, testified as follows:

State's Evidence

CLYDE BASS testified:

Direct Examination (by Mr. Kornegay)

I live at 1502 Glenwood Avenue in the City of Greensboro; I am employed by the P. Lorillard Company, the makers of Old Gold cigarettes. On the 7th day of December 1955 I was employed at the Gillespie Park Golf Club, Inc. and that is on Troy Street, off Asheboro Street. I was assistant pro at that time and I took care of the Golf shop [fol. 40] and I took care of the whole thing when the pro was not there. I am referring to a professional golfer when I say pro, and his name is Mr. Edwards. My duties were at that time to look after the golf shop, the golf course and everything else when Mr. Edwards, the pro, was not there.

On December 7, 1955 I was at the Gillespie Park Golf Course. I arrived at work around 8 in the morning and Mr. Edwards came in shortly afterwards. He went out of town that morning. When Mr. Edwards left I was cleaning the golf shop and it is located about 50 yards from the first tee. When I say tee I mean that portion of the golf course off of which the ball is driven.

On the date of December 7, 1955 I saw the six defendants in this action. When I first saw them, they were coming up to the golf shop door. They were coming in the golf shop door. One or two other fellows were in the golf shop when these defendants came in. One of the defendants walked up to the counter and said, "We want to play golf." They had their golf bags with them at that time. I told them it was a private club for members and invited guest only. One of them walked up to the counter and dropped 75 cents on the counter and said, "We are going to play," and from there they walked out to the first tee and started playing. I think five of them dropped 75 cents on the counter. They formed a little line and came around as they dropped the 75 cents on the counter and they went out of the door. I don't recall exactly what time of day it was, but I imagine it was a little before noon. I did not accept the money. The money lay on the counter for a good thirty or forty-five minutes and then Mr. Edwards took the money. Mr. Edwards returned to the golf course sometime thereafter. I told them that they couldn't play, but they went ahead and played. They went directly to the first tee from the golf shop. When [fol. 41] they reached the first tee, they teed a ball up and started to play. They split up. There were five of them, I think, and they split up. It was not allowed that over four could play together and they split up in two threesomes. Mr. Edwards came in a few minutes after they teed off, and I informed him that we had players out there who were not invited to my knowledge. Then he got into his car and went over. They were about the second tee. The defendants did not present me any certificate, identification cards or letters. No one called me on their behalf to play. They did not have any authority to my knowledge to play. I had been working at that time for the golf club about 8 or 9 months. I did not give these defendants permission to play.

Cross Examination (By Mr. Kennedy)

When people come out to Gillespie Park Golf course to play it is not customary for them to present credentials in order to play. I know most of the members who present

themselves to play. Non-members are not allowed to play there. I did not ask any of these defendants whether they were members or not. I know just about all of the members. I did not make any effort to find out if these men were members or not. Usually if they are members, they'll let you know right quick. To my knowledge, no Negroes have ever played at the Gillespie Park Golf Course before this date. Some Negroes have presented themselves before this date to play, but none have played to my knowledge.

Exception No. 2

(Q. Why didn't they play? I had nothing to do with them not playing.

Mr. Kornegay: Objection.
The Court: Sustained.

Exception No. 2.

[fol. 42] Direct Examination (By Mr. Kornegay)

My name is Ernest Edwards. Right now I live in Orlando, Florida. I am the Golf Professional at the Open Air Country Club, which is in Orlando, Florida, and I have been in Orlando, Florida, since January 22nd. Prior to that time I lived in Greensboro and when I was living in Greensboro, I was pro manager at the Gillespie Park Golf Club, Inc. The golf professional promotes interest in the Golf Club by getting new players started, and I was employed as a professional golfer by Gillespie Park Golf Club, Inc. There was a golf course connected with the corporation and it is located west of Troy Street, north of 70 and 29 and north and east of Randolph Avenue Extension and south of Asheboro Street. It is in the City of Greensboro.

I was employed by the Gillespie Park Golf Club, Inc. since 1949, which was the approximate date of the organization of the corporation and I was so employed there on the 7th day of December, 1955. The officers of the corporation at that time were J. R. Hughes, President; C. F. Smith, Secretary, and D. H. Everett, Treasurer.

The size of the Golf Course is 18 holes.

My duties as professional for the Gillespie Park Golf Club, Inc. were to supervise, teach, to increase interest in

golf and as manager to take care of the money and turn it in to the Treasurer and to supervise play on the golf course. We had membership for the golf club, Inc., and the dues for membership was $50.00 a year plus $10.00 Federal tax, which totaled $60.00. It was my duty to collect those fees. We had some other type of memberships besides the annual fee of $60.00. Associate membership for a person who desired to play would have to pay additional greens fees as he played. All of the students would be eligible to play on the golf course plus their guest.

Exception #3:

Q. Now, state, sir, what relation, if any, there was be-
[fol. 43] tween the Gillespie Park Golf Club, Inc. and the Golf Course which you have described as located presently in Greensboro and bounded by Asheboro Street and Troy Street and Randolph Avenue.

Mrs. Kennedy: Objection.
Court: Overruled.

A. Gillespie Golf Club—Gillespie Park Golf Club was in possession of the Course on this date that you referred to.

Exception #3.

On December 7, 1955, it was in their sole possession. They hired me as pro-manager to operate the club for them. There was certain upkeep in connection with the golf course and it was kept up by a greens keeper and he was my brother at that time. My brother maintained the golf course and made improvements to make playing conditions better. He was employed the same length of time that I was employed. Our club house is situated near #10 tee and #9 green. In the pro shop we had a display room for merchandise and drinks and sandwiches for the convenience of the players, and we had a locker room which was provided for the members, and the members would pay a yearly fee for the lockers. We did not maintain lockers for any other persons other than the members.

I was in Burlington on the morning of December 7, 1955, and I went around 9:00 in the morning. I returned from Burlington about 11:30 or 12 o'clock. After I returned, I

went to the club house and I talked with Mr. Bass, the witness who just testified. After talking with Mr. Bass, I went out on the golf course and there was a twosome and a foursome playing and I asked them if they had permission to play and they said, no. Then I ordered them off the course. There were six people playing and those six people are the six defendants in this case. I asked them off the course two times. They ignored me and kept on playing. They were on #2 tee and #3 green when I ordered them off the course. The portion upon which they were playing [fol. 44] is maintained by the golf club. After they refused to leave, I called the police and Mr. Darby came to the golf course. He is a deputy sheriff of Guilford County and Mr. John Lee, another deputy sheriff, came along with him. When they arrived, the defendants were still on the golf course. I suggested to Mr. Darby that I would like for him to take these people off the golf course and he told me that he could not do it.

Mr. Darby went with me to the seventh tee, and in his presence I asked these defendants to leave. They ignored me and kept on playing. This was the second time that I ordered them off to play. They were on the seventh tee when I asked them in the presence of Mr. Darby to leave and that is a portion of the Gillespie Park Golf Course. It is kept up by the Gillespie Park Golf Club, Inc., and that is a part of the course that I supervise. I called for their names and the deputy sheriff helped me get their names, and they gave me their names and later we issued warrants. They completed nine holes of play and it must have been about an hour and a half or some two hours that they played. They played the first nine holes.

Cross Examination (By Mrs. Kennedy)

I was employed by the City of Greensboro before going to work for the Gillespie Park Golf Club, Inc., and I was pro-manager of the Greensboro Municipal Golf Course. It is the same course that is now or was at that time under the control of the Gillespie Park Golf Club, Inc. It is the same Golf Course. I was employed by the City around November 1, 1941, until I went to work for the Gillespie

Park Golf Club, Inc. I was paid by the City of Greensboro prior to going to work at the Gillespie Park Golf Club, Inc.

I am not familiar with the legal end of the Bylaws of the Gillespie Park Golf Club, Inc., but I believe I do know who is entitled to play on this Golf Course under the Bylaws of the Club. Members of Gillespie Park Golf Club, [fol. 45] members of the Carolina Golf Association, members of a club that belongs to the Carolina Golf Association and the students and guests of me as an instructor. The way I interpret the bylaws, members who are allowed to play other than the members of the corporation are members of the Carolina Golf Association, as a separate class. That is my interpretation of the bylaws. I last worked for the Gillespie Park Golf Club, Inc., July of 1957, and I haven't worked for them since that time. At the time the warrants were taken out in this case, I had an interest by way of a little merchandise which I left at the Golf Club. I was not on salary December 2, 1957, when these warrants were taken out. I don't recall what I asked each of these defendants on that particular date, but I do know that they did not show any credentials which would permit them to be on the course. I sometimes require persons to show credentials in order that they are permitted to play. I know most of the golfers there.

Exception #4:

Q. Did any Negroes play during the time you were employed by Gillespie Park Golf Course while you were there? Do you know of your own knowledge whether or not a Negro has played on the Gillespie Park Golf Course during the time you were employed by this association?

Mr. Kornegay: Objection as being immaterial.
Court: Sustained.

Exception #4.

Redirect Examination (By Mr. Kornegay)

After working for the City, I went to work for Gillespie Park Golf Club, Inc., and they were paying me December 7, 1955.

Redirect Examination (By Mrs. Kennedy)

After going to work for the Gillespie Park Golf Club, Inc., the City stopped paying me and I was paid by this corporation. The corporation hired me after they informed me that they were taking over.

[fol. 46] Exception #5:

Q. Did the persons talking with you concerning this new employment tell you under what authority they were taking over?

Mr. Kornegay: Objection.
Court: Sustained.

Exception #5.

I turned over these defendants' greens fees to Mr. Major Kuykendall. He was the Solicitor of the City Court.

W. J. Darby testified:

Direct Examination (By Mr. Kornegay)

I am Deputy Sheriff of Guilford County. I was a Deputy Sheriff for Guilford County on December 7, 1955. Sometimes around noon or shortly thereafter on that date, I went to the Gillespie Park Golf Course in response to a telephone call. Mr. Lee and I were on duty. I received a call at approximately one o'clock in the afternoon. When I arrived at the Golf Course, I saw Mr. Ernest Edwards, the professional there, and I talked with him. After talking with Mr. Edwards, I learned that he wanted me to arrest these defendants, but I advised him that he first would have to secure a warrant, and he informed me that he didn't have the names of these persons. Mr. Lee and I went with Mr. Edwards over and Mr. Edwards asked four of these defendants off of the golf course and I believe Elijah Herring was one of the persons asked off the Golf Course. The defendants began to argue and I advised them not to have any argument. All we wanted was their names and addresses and occupation. While Mr. Edwards was writing their names down, the other two defendants walked up. The

big fellow down on the end and one of the smaller ones. I believe the large fellow was Leon Wolfe. I don't think that Mr. Edwards told Leon Wolfe and the other fellow to get off of the course. I told him to go ahead and get their names [fol. 47] and addresses, and he did so, and we turned around and walked back to the club house. The six defendants kept on playing golf. When these defendants were ordered off of the golf course, it was at that time that they were on the golf course. I believe it was the golf course, for there was a lot of green grass around; there was a hole or little cup. I didn't notice that there was a hole or cup or anything around with a flag on it. Each of the defendants had golf sticks and they had some colored caddies with them. Then we went back to the club house and left them over on the green or tee or whatever it is over there.

Cross Examination (By Mr. Marsh)

Mr. Edwards took the names of the defendants. I don't remember whether or not they said to Mr. Edwards, when he took their names in my presence, that they were citizens of the City of Greensboro. They are Negro defendants.

Ernest Edwards (Recalled) testified:

Redirect Examination (By Mr. Kornegay)

Phillip Cooke, Elijah Herring, Samuel Murray, George Simkins, Joseph Studivent and Leon Wolfe are the same men I saw on the Gillespie Park Golf Course on the 7th day of December, 1955, and these are the same men that I ordered off of the Golf Course on that occasion.

Recross Examination (By Mr. Kennedy)

Each of these defendants gave me their address. I do not recall whether or not they all live in the City of Greensboro.

Redirect Examination (By Mr. Kornegay)

I don't think it entered in as to whether or not they were citizens and residents of Greensboro.

The State Rests.

Exception #6:

Defendants move for judgment as of nonsuit.
Judgment overruled. Exception. Exception #6.

[fol. 48]

IN SUPERIOR COURT OF GUILFORD COUNTY

Defendants' Evidence

GEORGE SIMKINS, JR. testified:

Direct Examination (By Mr. Kennedy)

I live at 215 North Dudley Street in the City of Greensboro. I have lived here about 33 years. I am a dentist. I have been practicing my profession in the City of Greensboro since 1949. I went on the Gillespie Park Golf Course on December 7, 1955. I decided to go on the Gillespie Park Golf Course that day because I belong to the Nocho Golf Club, Inc., and we had retained an attorney to look into the matter as to the status of the Gillespie Park Golf Course, to find out whether it was City owned or whether it was a private golf course.

Exception #7:

Q. Doctor, as a result of your communications with your attorney, did she make her findings known to you?

A. Yes.

Q. And as a result of those findings, did you have an opinion satisfactory to yourself that you should go to the Gillespie Park Golf Course?

Mr. Kornegay: Objection.
Court: Sustained. Exception #7.

Exception #8:

Q. As a result of your conversation or communication with your attorney, did you feel that you had a right to play golf at Gillespie Park Golf Course?

Mr. Kornegay: Objection.
Court: Sustained. Exception #8.

After communicating with the attorney that we retained, and after receiving the letter, first I went around to various members of the Council, trying to get them to allow Negroes to use the Gillespie Park Golf Course, and I talked with several members of the Council about it along with another group that went with me. Then after that some [fol. 49] time elapsed and a group of us, on Wednesday, December 7, 1955, a little after 12:00, decided we just wanted to play golf, and we went out there and attempted to play. Elijah Herring, Joseph Sturdivent, Leon Wolfe, Phillip Cooke and Samuel Murray went along with me, and these are the same defendants in this case and they at that time lived in Greensboro.

I am a member of another club that reciprocates with the Gillespie Park Golf Course, and I felt that I had a right to play out there. All of these defendants live in Greensboro. I did not stop playing when requested by the professional because I felt that it was a public course, and I had just as much right to be there as anybody else, and I am a taxpayer, and I knew it was a public course, and I had paid my money to play. When we were arrested, we came along peaceably.

Cross Examination (By Mr. Kornegay)

On this date, five other defendants and I went to Gillespie Park Golf Course and I decided about a week before December 7th to go. It was around the first of December. I would not say that I am the leader of the group that went with me. It was not my suggestion that we go. I don't know who suggested going and I didn't get together with anybody out there or anything. I had said previously that I would go out around that Wednesday and some of the fellows decided to go, too. I did not say that I got together with them or that I called them; I said that I got with some more people to go to the City Council. These men and I got together right in front of my office. We got together across the street from my office. It was not closer to my office than the home or businesses of any of these defendants. One of the defendants, Sam Murray, worked close to me, for he has a pool room right up the street. My father's office was located

in a building right at the corner of Pearson Street and Market Street. He has not practiced there in over 30 years. No sign is on the window. Sam Murray does run a pool [fol. 50] room up the street. The place where we met and the pool room, from my office, are about equal distance. I am not the leader of the group and it was not my motion and suggestion that all of us would go out and play golf on the Gillespie Park Golf Course.

I am a member of the Nocho Park and that is a golf course in the City of Greensboro. The City does own that course. I used to work for the City. Yes, we have a private corporation and that corporation was organized and set up as a golf club for Nocho Park Golf Course. I joined the corporation under the rules and regulations of the club, and that corporation is not a member of the Carolina Golf Association. There is a reciprocal agreement between players of the Nocho Park Corporation and the Gillespie Park Corporation. According to the bylaws, that agreement is in writing, that is, according to the bylaws of Gillespie Park. Yes, I know all about the bylaws. Their bylaws say that any member in good standing with another club. The bylaws very definitely state so.

Exception #9:

Q. Three of the men weigh over 200 pounds, don't they?

Mr. Marsh: Objection.
Court: Overruled.

A. Yes. Exception #9.

That's right, three of the men do weigh over 200 pounds. We have all played golf together. I had a lawyer look into the matter for me.

Exception #10:

Q. Who was that lawyer?

Mr. Kennedy: Objection.
Court: Overruled. Exception #10.

Mrs. Elrita Alexander. I got the letter June 24, 1954. Yes, I received the letter a year and a half before we went out to the golf course. Yes, in reliance upon the letter I received June, 1954, I went out on the golf course to play

[fol. 51] golf in December, 1955. Yes, I waited a year and a half. The letter is not addressed to me, it is addressed to the Nocho Park Golf Club, Inc. I have the letter with me now. You may see it. I was not further advised in this matter. I have never filed for membership in the Gillespie Park Golf Club, Inc. I was not invited by any members of the club to play on this occasion. I was not invited by either of the two golf professionals there.

Mr. Bass was on duty when we arrived at the Golf Shop or the club house. I did speak to Mr. Bass and some of the fellows spoke, too. Mr. Bass told me that we would not be allowed to play. He did not tell me that this was a private club and that I was not a member and I could not play. He told me that I would not be allowed to play and he would not take our money. Perhaps he did tell us it was a private club. In spite of that, I did go out to play after leaving my money on the counter. I was on the second hole or green when the professional, Ernest Edwards, came up. He ordered my group and I off of the course and we refused to go. We were at the seventh fairway when the two deputy sheriffs, along with Mr. Edwards, came up. Mr. Edwards asked me in the presence of these deputy sheriffs to leave, and Mr. Edwards told me that we were not members of the club and it was a private club. Notwithstanding their request to leave, we did not leave and we played the first nine holes of the golf course.

Redirect Examination (By Mr. Kennedy)

I relied on something other than just the letter in connection with playing on the course. I talked with several members of the Council about the course and I had talked with other people about playing out there. After my conversation with these people, I decided that I could play golf at the Gillespie Park Golf Course. After I was arrested I did something further to determine my right to play on the Gillespie Park Golf Course; I sued the City School Board and the Gillespie Park Golf Corporation.

[fol. 52] Exception #11:

Q. And got a declaratory injunction?

Mr. Kornegay: Objection.

Court: Sustained. Exception #11.

I brought this action after December 7th; I don't recall the exact date.

Exception #12:

Q. Were the other defendants seated here associated in that case?

Mr. Kornegay: Objection.
Court: Sustained. Exception #12.

Exception #13:

Q. As a result of your actions and the decisions in that case, do you feel that . . .

Mr. Kornegay: Objection.
Court: Let him finish his question.

Q. As a result of your actions and the result of the decisions in that case, do you feel that you still have a right to play at the Gillespie Park Golf Course?

Mr. Kornegay: Objection.
Court: Sustained. Exception #13.

Hazel Burch testified:

Direct Examination (By Mr. Marsh)

I am City Clerk of the City of Greensboro, and in the capacity as City Clerk I do hold certain legal instruments belonging to the City of Greensboro and they are in my possession and I have control of them. I have in my possession certain deeds relative to the land as designated.

Defendants' Exhibits 1, 2, 3, 4, and 5, introduced in evidence:

Exhibit #1—Lease

State of North Carolina
Guilford County

[fol. 53] This Lease

Made this the 19th day of April, 1949, by The Board of Trustees of the Greensboro City Administrative Unit, a corporation created by act of the 1949 General Assembly, hereinafter sometimes called the Board of Trustees, to Gillespie Park Golf Club, Inc., a North Carolina corporation, hereinafter sometimes called the Golf Club, Witnesseth That:

1. By a lease dated April 1, 1947, the property hereinafter described in this lease was leased by the Greater Greensboro School District and the Trustees of the City Administrative Unit to the City of Greensboro in order that the city might operate thereon a public golf course. The lease was for a term of one (1) year from the date thereof and thereafter from year to year, both the lessor and the lessee having the right to terminate the lease upon ninety (90) days written notice to the other of its intention so to do.

2. The title to the property is now vested in the Board of Trustees of the Greensboro City Administrative Unit, a body politic and corporate, pursuant to an act of the 1949 General Assembly entitled, "An Act Relating to the Schools of The Greensboro City Administrative Unit and to The Governing Body thereof."

3. The City of Greensboro has requested the Board of Trustees to execute this lease and has agreed that the lease dated April 1, 1947, hereinbefore referred to, shall be cancelled effective upon the execution of this lease.

4. The Board of Trustees is of the opinion that the property will not be needed for school purposes during the next five (5) years; and since a nine-hole golf course has been laid out thereon, the Board of Trustees is of the opinion that it is advisable to lease the property to the Golf Club in order that its use as a golf course may be continued

during the term of this lease, such use being, in the opinion [fol. 54] of the Board of Trustees, a public or semi-public use.

Now, therefore, The Board of Trustees hereby demises and lets, and the Golf Club hereby hires and rents, the premises in Gilmer Township, Guilford County, North Carolina, which are described as follows:

BEGINNING at a point in the southern margin of Asheboro Street, said point being South 34 deg. 35′ East 420 feet from the Southwest intersection of Lucerne Street and Asheboro Street; running thence South 58 deg. 22′ West 593.62 feet to a point; thence North 89 deg. 16′ 30″ West 208.50 feet to a point; thence South 8 deg. 50′ 30″ East 966.94 feet to a point; thence South 87 deg. 42′ 30″ East 409.15 feet to a point; thence South 5 deg. 23′ East 984.45 feet to a point; thence North 88 deg. 46′ East 163.55 feet to a point; thence South 84 deg. 50′ East 1178.38 feet to a point; thence North 6 deg. 0′ East 1201.02 feet to a point in the southern margin of Asheboro Street; thence along the southern margin of Asheboro Street North 52 deg. 38′ West 1777.90 feet to the point of beginning; save and except the following portions thereof:

(1) The tract of land occupied by the Gillespie Park School, including the school building or buildings, the school yard, the playground, and the athletic field.

(2) The tract of land occupied by the dwelling house at No. 1720 Asheboro Street, including the yard, the garden, and the driveway.

The Board of Trustees shall have the right at all times to designate the exact limits of the two exceptions set out above.

TO HAVE AND TO HOLD said premises, together with the privileges and appurtenances thereunto belonging, to the [fol. 55] Golf Club for the term and upon the conditions hereinafter set out.

FIRST. TERM; TERMINATION UPON NOTICE. The term of this lease shall be five (5) years from the date hereof; but the Golf Club may terminate this lease at any time upon sixty (60) days written notice to the Board of Trustees, and the Board of Trustees, if it needs the property for school purposes or if it desires to offer it for sale, may likewise terminate this lease upon sixty (60) days written notice to the Golf Club.

SECOND. RENT. The Golf Club agrees to pay to the Board of Trustees as rent for the leased premises the sum of One Thousand Dollars ($1,000.00) each year, such rent to be payable as follows: Two Hundred Fifty Dollars ($250.00) on the first day of January, April, July, and October of each year during the term of this lease.

THIRD. USE OF LEASED PREMISES. The Golf Club agrees that the leased premises shall be used only as a golf course, and that it shall be operated in such a way that it will not interfere with the proper operation of the Gillespie Park School or any of its activities. And the Golf Club agrees that no nuisance of any kind shall be permitted on the leased premises.

FOURTH. ENTRY UPON LEASED PREMISES FOR INSPECTION OR OTHER PURPOSES. The Golf Club agrees that it will permit the Board of Trustees, its officers, members, and agents to enter upon the leased premises, or any part thereof, at any reasonable time for the purpose of inspecting the premises or for any other purpose that the Board of Trustees may deem proper.

FIFTH. ASSIGNMENT; SUB-LEASE. Except with the prior written consent of the Board of Trustees, the Golf Club shall not assign this lease or any interest therein, nor shall [fol. 56] it sub-let any portion of the leased premises.

SIXTH. FORFEITURE OF LEASE. The Board of Trustees may, at its option, declare this lease forfeited and null and void upon the happening of any of the following:

(1) If the Golf Club fails to pay any quarterly installment of rent within ten (10) days after it becomes due and payable.

(2) If this lease is assigned, or if any portion of the leased premises is sub-leased, in violation of the terms of this lease.

(3) If the Golf Club breaches any of its other covenants herein contained, and continues to breach such covenant for a period of five (5) days after the Golf Club shall have been given notice of such breach by the Board of Trustees or by the City Superintendent of Schools.

If, in any such event, the Board of Trustees declares this lease forfeited and null and void, the Board of Trustees shall have the right to re-enter the leased premises and to dispossess the Golf Club and expel it therefrom, all without prejudice to the Board of Trustees' other rights and remedies as provided by law. Notice to quit possession, demand for the possession of the leased premises, and every other formality are expressly waived by the Golf Club in case of any such forfeiture of the lease.

SEVENTH. METHOD OF GIVING NOTICE. Whenever written notice by either party to the other is permitted hereunder, such notice may be given by first-class registered mail, and shall be deemed to have been received by the addressee twenty-four (24) hours after the mailing thereof if addressed to the Board of Trustees of the Greensboro City Administrative Unit, Greensboro, North Carolina; or to the Gillespie Park Golf Club, Inc., Greensboro, North Carolina; Provided, however, that either the Board of [fol. 57] Trustees or the Golf Club may by written notice to the other change the address to which such notice shall be sent by the other.

IN WITNESS WHEREOF, each of the parties hereto has caused this lease to be signed in its corporate name, attested, and sealed with its corporate seal, all done by its duly authorized officers in duplicate on the date hereof.

THE BOARD OF TRUSTEES OF THE GREENSBORO CITY ADMINISTRATIVE UNIT

By /s/ D. E. Hudgins, Chairman

ATTEST:

(SEAL)

/s/ B. L. Smith
Secretary

GILLESPIE PARK GOLF CLUB, INC.

By /s/ James R. Dorsett
President

ATTEST: (SEAL)

/s/ Calvin F. Smith
Secretary

STATE OF NORTH CAROLINA
GUILFORD COUNTY

I, DORIS S. HUMPHRIES, a notary public of Guilford County, North Carolina, certify that B. L. Smith personally came before me this day and acknowledged that he is secretary of the Board of Trustees of the Greensboro City Administrative Unit, a corporation, and that, by authority duly given and as the act of the corporation, sealed with its corporate seal, and attested by himself as its secretary. My commission expires January 21, 1951.

Witness my hand and official seal, this the 29th day of April, 1949.

/s/ Doris S. Humphries
Notary Public.

(SEAL)

STATE OF NORTH CAROLINA
GUILFORD COUNTY

I, DOROTHY PARKER, a notary public of Guilford County, North Carolina, certify that Calvin F. Smith personally came before me this day and acknowledged that he is secretary of Gillespie Park Golf Club, Inc., a corporation, and that, by authority duly given and as the act of the cor-
[fol. 58] poration, the foregoing instrument was signed in

its name by its president, sealed with its corporate seal, and attested by himself as its secretary.

My commission expires 3/9/50.

Witness my hand and official seal, this the 29 day of April, 1949.

/s/ Dorothy Parker
(SEAL) Notary Public.

STATE OF NORTH CAROLINA
GUILFORD COUNTY

The foregoing certificates of Doris S. Humphries and Dorothy Parker, notaries public of Guilford County, North Carolina, are adjudged to be correct. Let the instrument and the certificates be registered.

This the 20th day of May, 1949.

/s/ C. S. Lambeth
ASST. CLERK SUPERIOR COURT.

EXHIBIT #2—EXTENSION OF LEASE

STATE OF NORTH CAROLINA
GUILFORD COUNTY

THIS EXTENSION OF LEASE.

Made this the 20th day of April, 1955, by THE BOARD OF TRUSTEES OF THE GREENSBORO CITY ADMINISTRATIVE UNIT, a corporation created by act of the 1949 General Assembly, hereinafter sometimes called the Board of Trustees, to GILLESPIE PARK GOLF CLUB, INCORPORATED, a North Carolina corporation, hereinafter sometimes called the Golf Club,

WITNESSETH THAT:

1. By lease dated April 19, 1949, certain property therein described was leased by the Board of Trustees to the Golf Club for a term of five (5) years from the date thereof,

and by instrument dated April 20, 1954, the term of the lease was extended for one year from the date thereof, which extension has now expired.

[fol. 59] 2. The Board of Trustees is of the opinion that the property described in the lease will not be needed for school purposes during the next three years, and that it is advisable to lease the property to the Golf Club in order that its use for Golf Club purposes may be continued during such period of three years, such use being, in the opinion of the Board of Trustees, a public or semi-public use.

Now, therefore, the lease hereinbefore referred to is hereby extended for a term of three years from the date hereof upon the same terms and conditions and for the same rental as are set out in the lease.

In Witness Whereof, each of the parties hereto has caused this extension of lease to be signed in its corporate name, attested and sealed with its corporate seal, all done by its duly authorized officers in duplicate on or as the date hereof.

THE BOARD OF TRUSTEES OF THE GREENSBORO CITY ADMINISTRATIVE UNIT

By /s/ Jno. R. Foster
Chairman

ATTEST:

/s/ B. L. Smith
Secretary

(SEAL)

GILLESPIE PARK GOLF CLUB, INC.

By /s/ John R. Hughes
President

ATTEST:

/s/ Calvin F. Smith
Secretary

(SEAL)

Exhibit #3—Deed

By Mrs. Zella Allred (widow) to City of Greensboro:

Taken from Book No. 907, page 178.

This Deed Made this the 13th day of February, 1940, by Mrs. Zella Allred (widow of E. F. Allred), of Guilford County and State of North Carolina, party of the first part, to City of Greensboro, a municipal corporation located in Guilford County and State of North Carolina, party of the second part, Witnesseth, That the said party of the first [fol. 60] part, in consideration of ($120.00) One Hundred Twenty Dollars, to her paid by the said party of the second part, the receipt of which is hereby acknowledged, has bargained and sold, and by these presents does bargain, sell and convey unto the said party of the second part and its successors a tract or parcel of land in the County of Guilford and State of North Carolina, in Gilmer Township, adjoining the lands of Greater Greensboro School District and others, and bounded as follows:

> Beginning at an iron pipe, said pipe being referenced by co-ordinates 10,242.15 north, and 17,383.44 west, City of Greensboro datum, and being the southwest corner of the property as conveyed to the Board of Education of Greater Greensboro School District by Dr. E. E. Gillespie in Book 554, page 638, and running thence with said school property line north 88 deg. 46′ east 163.35 feet to an iron pipe in pile of stones; thence south 09 deg. 28′ west 140 feet to an iron pipe in ditch, said point being the southeast corner of Grantors property as conveyed to E. F. Allred by W. C. Bain, Book 200, page 618; thence up said ditch north 79 deg. 54′ west 131.62 feet to an iron pipe; thence north 05 deg. 29′ west 112.0 feet to the point of beginning, containing 0.43 acres.

For more complete description see attached Map No. D-161.

The above property was conveyed to E. F. Allred by W. C. Bain, et ux, Book 200, page 618.

This conveyance is made subject to taxes on the above described tract of land for the year 1940.

The above land was conveyed to Grantor by .....
See Book No. , page , etc.

[fol. 61] To Have and to Hold the aforesaid tract or parcel of land and all privileges and appurtenances thereunto belonging to the said party of the second part and its successor and assigns forever.

And the said party of the first part does covenant that she is seized of said premises in fee and has the right to convey the same in fee simple; that the same are free from encumbrances; and that ..... will warrant and defend the said title to the same against the claims of all persons whatsoever.

In Testimony Whereof, the said party of the first part has hereunto set her hand and seal the day and year first above written.

Mrs. Zella Allred (Seal)

Witness:

Approved as to form—
legal sufficiency.
H. C. Wilson, City Atty.

State of North Carolina—Guilford County.

I, Herbert B. Winston, Jr., a Notary Public of said County, do hereby certify that Mrs. Zella Allred (widow), grantor, personally appeared before me this day and acknowledged the execution of the foregoing deed. Let the said deed and this certificate be registered.

Witness my hand and seal this the 13th day of February, 1940.

Herbert B. Winston, Jr., N.P. (Seal)

My commission expires:

June 29, 1940.

STATE OF NORTH CAROLINA
GUILFORD COUNTY.

The foregoing certificate of Herbert B. Winston, Jr., [fol. 62] Notary Public of said County, is adjudged to be correct. Let the said deed and this certificate be registered.

Witness my hand and seal this February 15, 1940.

H. L. BUDGER, Deputy C.S.C.

Filed for registration on February 15, 1940, at 3:35 o'clock P.M., and duly recorded in the office of the Register of Deeds in Guilford County, N. C., in Book , page , etc.

J. H. McADOO, Register of Deeds.

EXHIBIT #4—DEED

by Laura W. Cone and Edward Toner Cone, Commissioners, to City of Greensboro:

Taken from Book 960, page 415.

THIS DEED, Made this the 30th day of June, 1941, by Laura W. Cone and Edward Toner Cone, Commissioners, of Guilford County and State of North Carolina, parties of the first part, to City of Greensboro of Guilford County and State of North Carolina, party of the second part, WITNESSETH, That the said parties of the first part, in consideration of ($10.00) Ten Dollars and other valuable considerations to them paid by the said party of the second part, the receipt of which is hereby acknowledged, has/have bargained and sold, and by these presents do bargain, sell and convey unto the said party of the second part and its successors a tract or parcel of land in the County of Guilford and State of North Carolina, in Gilmer Township, adjoining the lands of and others, and bounded as follows:

BEGINNING at an iron pipe in the east line of a tract of land as conveyed to City of Greensboro by C. C. Hudson, Tr., and recorded in Book 440, page 368, said point

being in grantors west line, and being N. 0 deg. 58′ E. 250.0 feet from an iron pipe in the northern margin of Abattoir Road and running thence along grantors [fol. 63] west line N. 0 deg. 58′ E. 1287.6 feet to an iron pipe corner with Greater Greensboro Schools Property; thence with line of Greater Greensboro Schools Property S. 84 deg. 50′ E. 1178.38 feet to an iron pipe at the end of Troy Street; thence a new line S. 34 deg. 55′ W. 1308.1 feet to an iron pipe at Northwest corner of old Chimney; thence S. 76 deg. 19′ W. 459.54 feet to the point of BEGINNING, containing 21.933 acres.

This conveyance is duly authorized by order entered on the 14th day of July, 1941, in a special proceeding entitled "Laura W. Cone, et al. v. Frances S. Hetherington, et al."

The above land was conveyed to grantor by Part of J. W. Cone Est. See Book No. , page , etc.

TO HAVE AND TO HOLD the aforesaid tract or parcel of land and all privileges and appurtenances thereunto belonging to the said party of the second part and its successors and assigns forever.

And the said parties of the first part do covenant that they are seized of said premises in fee and have the right to convey the same in fee simple; that the same are free from encumbrances; and that they will warrant and defend the said title to the same against the claims of all persons whatsoever.

IN TESTIMONY WHEREOF, the said part..... of the first part ..... hereunto set ..... hand..... and seal..... the day and year first above written.

/s/ Laura W. Cone COMMISSIONER (SEAL)

/s/ Edward Toner Cone COMMISSIONER (SEAL)

WITNESS:

STATE OF NORTH CAROLINA
GUILFORD COUNTY

I, Alice M. Bray, a Notary Public of said County, do hereby certify that Laura W. Cone & Edward Toner Cone, Com- [fol. 64] missioners, grantor, personally appeared before me this day and acknowledged the execution of the foregoing deed. Let the said deed and this certificate be registered.

Witness my hand and seal this the 30th day of June, 1941.

ALICE M. BRAY, N.P. (SEAL)

My commission expires: 2/15, 1942.

STATE OF NORTH CAROLINA
GUILFORD COUNTY

The foregoing certificate of Alice M. Bray, a Notary Public of said County, is adjudged to be correct. Let the said deed and this certificate be registered.

Witness my hand and seal this the 23 day of July, 1941.

CHARLES A. PRATT, Dep. C.S.C.

Filed for registration on July 23, 1941, at 10 o'clock A.M., and duly recorded in the office of the Register of Deeds in Guilford County, N. C., in Book , page , etc.

J. H. McADOO
Register of Deeds.

EXHIBIT #5 Taken from Book 1147, page 182.

DEED by Eugene G. Shaw, Comr., to City of Greensboro:

THIS DEED, Made this 6th day of December, 1946, by and between Eugene G. Shaw, of Guilford County, North Carolina, acting as Commissioner as hereinafter set forth, party of the first part; and the CITY OF GREENSBORO, municipal corporation, of Guilford County, North Carolina, party of the second part;

WITNESSETH: That Whereas, in the special proceeding now pending in the Superior Court of Guilford County, entitled "Eugene G. Shaw, Administrator of the Estate of Zella E. Allred, Deceased, vs. Russell E. Allred, et al.," the undersigned Eugene G. Shaw was duly appointed a Commissioner under an order entered by Honorable J. P. [fol. 65] Shore, Clerk of the Superior Court of said County, under date of July 13, 1945; and was duly authorized, empowered and directed to make a sale of the lands and premises described in the petition filed in said proceeding.

And Whereas, pursuant to said order the undersigned Eugene G. Shaw, Commissioner as aforesaid, after due advertisement in conformity with the provisions of the orders of the Court, conducted a sale and resale of said property, the last resale having been held on the 10th day of September, 1945, at the Courthouse door of Guilford County, in Greensboro, North Carolina, after due and legal advertisement as prescribed by the order of the Court and in accordance with the provisions of law, at which sale Oscar I. Wrenn became the last and highest bidder at and for the sum of $6,825.00, subject to 1945 taxes and also subject to confirmation by the Court.

And Whereas, more than 10 days have expired since the resale of said property during which time no increased or upset bid was filed, and no objection was interposed regarding said sale by anyone having any interest in the property; and thereupon the undersigned Commissioner, after sufficient investigation regarding the value of the property and adequacy of the bid, submitted a report recommending confirmation of said sale to the said Oscar I. Wrenn at and for the sum of $6,825.00, subject to 1945 taxes.

And Whereas, the said Oscar I. Wrenn has duly transferred and assigned his bid to the City of Greensboro, the party of the second part, and has requested that a deed be made to the party of the second part upon payment by it of the purchase price.

And Whereas, under date of September ...., 1945, an order was duly entered by Honorable J. P. Shore, Clerk of the

Superior Court of Guilford County, confirming said sale [fol. 66] and authorizing and directing said Commissioner to make and execute a good and sufficient deed conveying said lands in fee simple to the party of the second part upon payment of the purchase price; and whereas the purchase price has been paid in full.

Now, Therefore, in consideration of the premises and payment of the purchase price by the said party of the second part, receipt of which is hereby fully acknowledged, the party of the first part has bargained and sold and by these presents does hereby bargain, sell and convey unto the party of the second part, its successors and assigns, those certain tracts or parcels of land lying and being in Gilmer Township, Guilford County, North Carolina, and more particularly bounded and described as follows:

FIRST TRACT: BEGINNING at a stake in a pile of stones, the southeast corner of the Lewis tract of the W. C. Bain property and running thence South 7 deg. 35′ E 1040 ft. to stake in a ditch, same being Mile Run Branch; thence eastwardly down the said ditch about 540 feet to a stake in Benbow's line; thence North 2 deg. 12′ East with Benbow's line 140 feet to a pile of stones in Gillespie's line; thence South 81 deg. 30′ West with Gillespie's line 165 feet to a stake; thence with Gillespie's line North 4 deg. 5′ West 1005 feet to a stake in a pile of stones in Gillespie's line; thence North 86 deg. 15′ West with the Gillespie's line 410 feet to the point of BEGINNING, containing 10.3 acres more or less. Together with the right of way over a 40-foot road or street running from Randolph Avenue to the northwest corner of the tract of land above conveyed. The said 40 feet street or road to be cut 20 feet from the south side of the Lewis tract or the W. C. Bain property and 20 feet from the tract lying immediately south and adjoining the said Lewis tract.

SECOND TRACT: BEGINNING at a stone, Allred and Bain's corner; and running with Allred's line South [fol. 67] 7 deg. 35′ East 1040 feet to a stake on the bank of a ditch; thence up the ditch 80 feet to a stake;

thence crossing the ditch 10 feet; thence up the ditch 20 feet to a stake; thence crossing the ditch at right angles 10 feet to a stake; thence continuing up the creek 135 feet in all 235 feet to a stake; thence North 7 deg. 35′ West 965 feet to a stake in the center of a 20-foot street; thence with the center line of said street south 86 deg. 15′ East 218 feet to the BEGINNING, and containing 4.95 acres. One-tenth of an acre included in the above is in the street on the north end. Save and except therefrom a small tract comprising .43 acres conveyed by Zella E. Allred to the City of Greensboro by deed dated February 13, 1940, and recorded in Book 907, page 178, in the Office of the Register of Deeds of Guilford County, N. C.

This conveyance is made subject to City and County taxes for the year 1945.

TO HAVE AND TO HOLD said lands and premises unto it, said party of the second part, its successors and assigns forever in as full and ample manner as the party of the first part is authorized and empowered to convey the same.

IN TESTIMONY WHEREOF, the party of the first part has hereunto set his hand and affixed his seal on the day and year first above written.

EUGENE G. SHAW (SEAL).
Commissioner.

NORTH CAROLINA
GUILFORD COUNTY

I, J. P. Shore, C. S. C. of said County, do hereby certify that Eugene G. Shaw this day personally appeared before me and acknowledged his execution of the foregoing deed in his capacity as Commissioner for the purposes therein [fol. 68] expressed. Let the said deed, together with this certificate, be registered.

Witness my hand and notarial seal this 6 day of December, 1946.

J. P. SHORE
Clerk of Superior Court.

Filed for registration on December 6, 1946, at 11:50 o'clock A.M., and duly recorded in the office of Register of Deeds of Guilford County, N. C., in Book No. , page , etc.

J. H. McAdoo
Register of Deeds.

By: J. B. Carpenter,
Deputy Register of Deeds.

[fol. 69] MYRTLE D. COBB:

Direct examination.

By Mrs. Kennedy:

My name is Myrtle D. Cobb and I am Deputy Clerk in the Federal Court in Greensboro, and I have in my possession or it is my duty to keep in my possession public records concerning Federal cases and I do have in my possession the record in the case of Simkins, et al. v. The Gillespie Park Golf Course. I have all of the original papers in that case.

Exception #14.

Mr. Marsh: We have one further thing, may it please the Court. We issued a subpoena duces tecum to the President of the Gillespie Park Golf Club Association to bring over the bylaws of the corporation. I want to know if they have been brought.

Mr. Kornegay: They are here.

Mr. Marsh: May it please the Court, I should like to have marked as Defendants' Exhibit 8 the Bylaws of the Gillespie Park Golf Club, Inc., and specifically Section 2, which relates to the use of the golf facilities.

Mr. Kornegay: I am objecting to it unless they are identified or something.

Court: Mr. Hughes said he had them and handed them to him. Do you want him to call Mr. Hughes to the stand and say they are? I'll let him do that.

Mr. Kornegay: Of course, Mr. Hughes stood up, but so far there has been no identification of the minutes inso-

far as this court is concerned or the record. It was just a statement here.

Court: Sustained.

Mr. Marsh: We will call Mr. Hughes under G S 8-50 as an adverse witness.

Court: You can call him if you want to call him as a witness. I am not passing on G S 8-50 at this time. I don't want any misunderstanding about it; do you want to call him as your witness?

Mr. Marsh: I want to call him to identify this as being [fol. 70] the proper document.

Court: I am not asking you why you put him on the stand. I am asking you, do you want to call him as a witness?

Mr. Marsh: No, I don't want him as a witness.

Court: All right, have a seat then, Mr. Hughes. Any further evidence?

Mr. Marsh: Yes. We call Mr. Hughes.

Exception #14.

JOHN R. HUGHES:

Direct examination.

By Mr. Marsh:

I did come to court in response to subpoena duces tecum issued by the defendants in connection with the bylaws of the Gillespie Park Golf Club, Inc. I am the president of the corporation and I do have and identify these as the bylaws.

DEFENDANT'S EXHIBIT 8 admitted into evidence:

BY-LAWS OF THE GILLESPIE PARK GOLF CLUB, INC.

ARTICLE 1.

SECTION 1—Membership.

Membership in this corporation shall be restricted to members who are approved by the Board of Directors for

membership in this Club. There shall be two types of membership; one, the payment of a stipulated fee of $30.00 or more, plus tax, shall cover membership and greens fees. The other type of membership shall be $1.00, plus tax, but this type of member shall pay greens fees each time he uses the course. The greens fees and the amount of membership fees may be changed by the Board of Directors at any time upon two-thirds vote of the members of the Board.

SECTION 2—Use of Golf Facilities.

The golf course and its facilities shall be used only by [fol. 71] members, their invited guests, members in good standing of other golf clubs, members of the Carolina Golf Association, pupils of the Professional and his invited guests.

SECTION 3—Annual Meetings.

The annual meeting of the members of this corporation may be held in the office of the corporation in Greensboro, North Carolina, on the first Monday in April, 1950, and in each and every year thereafter. Said annual meetings shall transact such business as may properly be brought before it.

SECTION 4—Special Meetings.

Special meetings of the members may be called at any time by the President or three Directors.

SECTION 5—Quorum.

A quorum of the members shall consist of at least a majority who shall be present at the meeting in person or by proxy. A quorum at a Directors' meeting shall be a majority of the Directors being personally present.

SECTION 6—Voting Rights.

In all elections or re-elections of Directors of the corporation, a majority of the Directors present at a Directors' meeting voting affirmatively shall be sufficient to elect or re-elect Directors.

ARTICLE 2.

SECTION 1—Number and Term of Office.

There may be seven Directors of this corporation. Two of the incorporators, namely, Calvin F. Smith and E. J. Irving, shall be elected as Directors to serve for one year. Ross Weatherly, James R. Dorsett and Bob Whiteley are to be elected as Directors to serve for two years. John R. Hughes [fol. 72] and D. H. Everett are to be elected Directors to serve for three years. At the first organizational meeting, the above named shall be elected as Directors to serve for the periods specified. At each annual meeting of the Board of Directors, the Board of Directors shall elect or re-elect the Directors whose office expires. The election of Directors or the re-election of them and the election of the officers of the corporation shall be vested in the Board of Directors. The members of the corporation, if they so desire, may make suggestions to the Board with respect to members. The Board of Directors shall have power, upon resignation or death of any member of the Board of Directors, to fill the office by appointment until the next annual meeting of the Board of Directors.

. . .

. . . .ments made to the corporation and shall keep full and accurate accounts of all moneys received and paid by him on account of the corporation. The Treasurer shall do and perform any other act conferred upon him by the Board of Directors.

ARTICLE 4.

SECTION 1—Corporate Seal.

The Board of Directors shall provide a suitable corporate seal, showing the name of the corporation and the words "Gillespie Park Golf Club, Inc." Said seal, when obtained, shall be impressed on the margin of the minute book containing this Article of the By-Laws.

ARTICLE 5.

SECTION 1—Amendments.

[fol. 73] These By-Laws may be amended, altered or repealed by affirmative vote of a majority of the members of the corporation that are members of the Board of Directors. Authority for the amending, altering or repealing of the By-Laws shall be vested in the Board of Directors. Before the By-Laws may be amended, altered or repealed, notice shall be given to the Board of Directors of the nature or purpose of the amendment one week prior to a call meeting or a regular meeting. This notice may be waived in writing by the Directors. It shall be necessary for two-thirds of the members of the Board of Directors to vote affirmatively in order to amend, alter or repeal these By-Laws.

[fol. 74] Cross examination.

By Mr. Kornegay:

I am President of the Gillespie Park Golf Club, Inc., and I have been president of that corporation since the first president died.

Exception #15:

(Q: What was the purpose of that corporation?
A) The purpose of the corporation was to operate the golf club for the members of the club, their invited guests and members of the Carolina Golf Association.

Mr. Marsh: Objection. Documentary evidence is the best evidence.

Court: Overruled. The objection came after he had answered the question. Go ahead.
Exception #15.

When we took over the corporation the City did own the Golf Course, but we formed a corporation because there were men who were willing to back it and finance it. After

we leased the golf course from the City, we went into possession of the golf course. We put about $100,000 into the improvements. We raised this revenue from dues and several of our directors borrowed money from banks at different times to help finance and run the course. There was no tax money as a part of the $100,000. Not one nickel was given us by the City of Greensboro. The City had no voice in the operation of the golf course after the corporation took it up. We set up our own rules, we hired our own people. We paid the insurance for the various employees that we had. We operated completely on our own. The City had nothing whatever to do with it. The City did not pay any of the salaries of the employees. They paid no salaries to people who performed maintenance on the golf course.

When we first took over the golf course there was just the 9-hole golf course. The purpose of our taking it over was to expand it into an 18-hole golf course. At the time we took over the golf course the City had no plans for expansion. We added a club house which cost around $5,000. This money was not raised from tax money, but was financed [fol. 75] by the club. Members of other golf clubs were not entitled to play on our golf course without first filing an application with the club. Only our members had a right to play on the golf course. Those persons allowed to play were members of the Gillespie Park Golf Club, Inc., and their invited guests and members in good standing of other clubs that were members of the Carolina Golf Association. We instructed the professional Ernest Edwards in regard to who was entitled to play. For memberships we made an application to the Pro or some of the other directors and it was acted upon.

Exception #16:

Q. Are you familiar with the membership of the Carolina Golf Association?

A. I was of the date of the 5th of December, 1955.

Q. As of December 5, 1955, . . .

Mr. Marsh: I think that is irrelevant. The Carolina Golf Association is not at issue in this case.

Court: Go ahead.

Exception #16.

Exception #17:

Q. Was the Nocho Park Golf Club, Inc: a member of the Carolina Golf Association on that date?

Mr. Marsh: Objection.

Court: Overruled.

A. No, sir, it was not.

Exception #17.

There was no reciprocal agreement between the Gillespie Park Golf Club and Nocho Park Golf Club with reference to playing on the course. Our reciprocation was with other clubs that were members of the Carolina Golf Association.

Exception #18:

Q. Did any of these defendants on the 7th day of De-
[fol. 76] cember, 1955, or any date prior thereto file with the Gillespie Park Golf Association an application for membership?

Mr. Marsh: Objection.

Court: Overruled.

Exception #18.

A. No, sir, they did not to my knowledge.

Redirect examination.

By Mr. Marsh:

I did not testify for my association in the case of Simkins and others against the City of Greensboro, Board of Education and Gillespie Park Golf Club, Inc.

Exception #19:

Q. Mr. Hughes, I hold in my hand a document purporting to be a transcript of the testimony in the case.

Mr. Kornegay: Objection.

Court: Bear in mind that he is your witness.

Mr. Marsh: I called him under 8-50.

Court: I told you that you could call him as your witness. I'll be glad to read any statute that you have. The objection is sustained.

Exception #19.

Exception #20:

Q. You say, I believe, that you were President of the Gillespie Park Golf Club, Inc.?

A. I am.

Q. As such, you are interested in the continuation of that Association?

Mr. Kornegay: Objection.

Court: Sustained.

Mr. Marsh: If your Honor please, I want to show that he is a hostile witness.

Court: I have sustained the objection.

Exception #20.

Exception #21:

Q. Prior to your organization of the Gillespie Park Golf Club, Inc., were you not Director of and Chairman of the City Recreation of the City of Greensboro?

Mr. Kornegay: Objection.

Court: Sustained.

Exception #21.

(Witness excused.)

[fol. 77] Exception #22:

Mrs. Kennedy: If your Honor please, we'd like, if possible, to have a ruling on whether or not these would be admissible.

Court: I am going to sustain the objection as to those two Exhibits, that is #6 and #7.
Exception #22.

DR. GEORGE SIMKINS, JR.:

Redirect examination.

By Mr. Kennedy:

I, along with the other defendants, lived in Greensboro December 7, 1955. There was no sign saying no trespassing or members only, at the Gillespie Park Golf Course on December 7, 1955.

Exception #23:

Defendants and each of them move for judgment as of nonsuit.

Court: Motion overruled.
Exception #23.

In the Absence of the Jury, Mr. John R. Hughes Made the Following Statement to the Court:

Mr. Hughes: If your Honor please, I would like to ask the Reporter to read the question and answer which I gave in my testimony, so that we may get the record straight.

Question Read by Reporter as follows: "Mr. Hughes, did you testify for your Association in the case of Simkins and others against the City of Greensboro, Board of Education, and Gillespie Park Golf Club, Inc.?"

Mr. Hughes: In order that there may be no misunderstanding, I did testify in that case, but I was called as an adverse witness for the plaintiffs.

Court: Do you wish to call Mr. Hughes back to the stand?

Mr. Marsh: No, your Honor.

[fol. 78]

IN SUPERIOR COURT OF GUILFORD COUNTY

CHARGE OF THE COURT

Ladies and Gentlemen of the Jury: These are criminal actions in which the defendants, Phillip Cooke, Leon Wolfe, George Simkins, Jr., Joseph Sturdivant, Samuel Murray, and Elijah H. Herring, stand charged in separate warrants which are consolidated for trial with violation of the portion of the following statute which I will read to you:

"If any person, after being forbidden to do so, shall go or enter upon the lands of another without a license therefor, he shall be guilty of a misdemeanor and on conviction shall be fined not exceeding fifty dollars or imprisoned not more than thirty days."

To the charge against the defendants, and each one, each defendant has entered a plea of not guilty, and is thereupon presumed to be innocent. The presumption of innocence remains with the defendants and each of them throughout the progress of the trial until and unless the State has satisfied you from the evidence and beyond a reasonable doubt of such defendant's guilt. Of course, that rule applies equally to each defendant.

The State has offered evidence which it contends tends to show that on the date alleged in each warrant, that is December 7, 1958, Bob Bass was Assistant Pro and Ernest Edwards was the Professional and Manager of the Gillespie Park Golf Club, Inc., and that corporation operated a golf course and club house and locker room and pro shop on property located in the City of Greensboro.

The State has offered evidence which it further contends tends to show that on the date alleged, the professional and manager, Mr. Edwards, was away on business and that Bob Bass was in charge of the premises; that these defendants came to the club house or to the golf shop door and walked to the counter, and one of them said that they wanted [fol. 79] to play golf; that they were told that it was a private club for members and their guests and that one of them said, "We're going to play anyway"; that some, or perhaps all, as I recall the State's evidence tends to show,

that all of them dropped 75¢ on the counter and went out and played; that Bass did not accept the money; that he left it on the counter until Mr. Edwards came in and that Mr. Edwards thereafter turned it over, as I recall, to the Solicitor of Recorder's Court.

The State further contends that it has offered evidence which it contends tends to show that Mr. Bass told the defendants that they could not play but that they went to the first tee, split up in a foursome or twosome; that is, four defendants played together and the other two played together, and that when Mr. Edwards came onto the property that Mr. Bass told him what had happened.

The State has further offered evidence which it contends tends to show that Mr. Edwards went out and found, as I recall, some of the defendants on the second tee, second hole, and the others on the third, and that he told them that they should leave; that they were not permitted to play golf there; that he asked them if they had permission and they said, "No"; that he then ordered them off; that they kept on playing anyway; that he called the police and Mr. Darby and, as I recall, some other depufy sheriff came to the premises; that Mr. Darby went with him on the golf course and found the defendants at about the seventh hole; that he again ordered them off and they kept on playing; that he asked them for their names and they gave them their names and that the six persons were the six defendants in this case; that they continued to play and completed the nine holes of golf and then left.

The State has further offered evidence which it contends tends to show that the premises known as the Gillespie Park Golf Course have been operated since about 1949 [fol. 80] and have been in possession of the Gillespie Park Golf Club, Inc.; that that is a corporation which was formed and thereafter leased what was then known as the Gillespie Park from the City of Greensboro; that it was then a 9-hole course; that they added nine more holes to make an 18-hole golf course; that since going into possession under the lease, the corporation has maintained the property, improved it, added a building to the property, kept the golf course in repair and has accepted memberships and conducted the

golf course or golf club, a corporation, for the purpose of encouraging the playing of golf on the golf course.

The State further contends that the evidence favorable to it tends to show that the corporation was using the property for the purposes for which it was adapted or adaptable and that neither of the defendants is or was a member of the corporation or the golf club.

The State further contends that the evidence favorable to it tends to show that only those persons were permitted to play who were members or guests of the members or members of the Carolina Golf Association, either as individuals or from clubs that were members of that association or some other club that had a reciprocal playing agreement with the Gillespie Park Golf Club.

Now, the defendants, on the other hand, have offered evidence which they contend tends to show that the property which the golf course and club house and other facilities was located was the property of the City of Greensboro; that it had been owned by the City for many years prior to 1949 and was still owned by the City during 1955 and, particularly on December 7th of that year.

The defendants further contend that the evidence favorable to them tends to show that the City had leased the property to the corporation known as the Gillespie Park [fol. 81] Golf Club, Inc., and that the lease was a five-year lease and was thereafter extended, and that the lease was in existence or the extension of the lease was in existence on the date alleged in the warrant.

The defendants further contend that the evidence favorable to them tends to show that the defendant Dr. George Simkins, Jr. had approached some members of the Council and thereafter consulted an attorney, and in June, 1954, June or July, had received a letter from an attorney regarding the golf course; that he went there, he and the other defendants, to play golf; that each of them, so the defendants contend, is a citizen of the City of Greensboro and each was a citizen on the date of December 7, 1955.

They contend that the evidence favorable to them tends to show that Dr. Simkins and, as I recall it, the other defendants—you will rely on your own recollection about that—was a member of a golf club here in Greensboro known

as the Nocho Golf Club and that he considered that as a citizen of the City of Greensboro and also as a member of that golf club that he was entitled as a matter of right to go on the Gillespie Park Golf Club to play golf and the defendants contend that the evidence favorable to them tends to show that each of the defendants so considered that they had that right.

He further contends, or rather they contend, that the evidence favorable to them tends to show that the Nocho Club reciprocates with the Gillespie Club, so that a player from either club would have the right to play at the other and that he paid what he understood to be the charges normally assessed for a person to play who was not a member; that each of them paid the charges that he understood were normally assessed for a person to play who was not a member of that particular club.

The defendants further contend that the evidence favorable to them tends to show that while they were told by Mr. Bass and Mr. Edwards not to play or, as I recall, by [fol. 82] Mr. Edwards to leave after they were playing; that they did not do so because they considered it was their right to be there under the circumstances already suggested and indicated and that they knew it was City property; that they knew that each of them was a citizen of the City and a taxpayer; that they considered that under the by-laws of the Gillespie Park Club that they had a right to play there as well as under the law generally; that there was a reciprocal agreement between their Nocho Club and the Gillespie Park Club and they considered that they were within their rights and had no intention, so they contend, to violate any law but were simply asserting rights which they in good faith believed were there and which they contend, in fact, were there.

They contend, members of the jury, that the evidence favorable to them tends to show that they did not violate the statute under which they stand charged and that you should at least have a reasonable doubt as to their guilt and return a verdict of not guilty.

Now, members of the jury, I have not attempted to restate any of the evidence verbatim, but I have attempted only to briefly summarize the evidence. It is your duty,

however, to remember all of the evidence, and where your recollection of the evidence is in conflict with mine or counsel for the defendants or the Solicitor, you will be guided entirely by your own recollection. That is so because you are the sole triers of the fact. It is for you to say what the true facts are from the evidence as you recall and understand it to be. The law imposes upon the trial Judge the duty to state only so much of the evidence as is necessary to explain and apply the law arising thereon, and I instruct you that you will consider the law as I charge you the law to be with the facts as you find them to be and thereby arrive at your verdict.

[fol. 83] Now, the general rule of law as it relates to an alleged trespass under the statute which I read to you a few moments ago is to the effect that the trespass prohibited by the statute is not one against title but one against possession; that is to say, the statute falls in the category of criminal trespasses, those designed to protect possession whether the possession be actual or constructive. Our Supreme Court has said to constitute trespass under this statute after notice or warning under this statute three essential ingredients must co-exist: First, the land must be the land of the prosecutor in the sense that it is either in his actual or constructive possession.

Now, the State contends that the land was in the actual possession of the corporation. Actual possession is a tangible fact. Actual possession of land consists in exercising acts of dominion over it; and making the ordinary use of it to which it is adapted and in taking the profits of which it is susceptible.

Second, the accused must enter upon the land intentionally; and, third, the accused must do this after being forbidden to do so by the prosecutor.

Now, my recollection of the evidence of the State and the defendants is to the effect that the defendants walked into the club house or pro shop and were then told, first by Mr. Bass, that they would not be permitted to play. Now, it is not necessary for the State to show that they were forbidden to come upon the property before they ever came across the boundary line. It is sufficient, as to that third ingredient, that is that the accused must do this after

being forbidden to do so by the prosecutor—if the defendants came onto the property without being forbidden to do so, but after arriving, were told that they were not permitted to stay there and were not permitted to go upon the golf course or to play golf and notwithstanding that, remained, went upon the golf course and played golf, then [fol. 84] that would be conduct on the part of them after being forbidden to do so, and would be within the meaning of the third element which I just called to your attention; and provided, of course, that they were forbidden by the corporation or one of its duly authorized employees or agents.

Now, if the State has satisfied you from the evidence and beyond a reasonable doubt that the land in question, that is the golf course property, was the land of the corporation, that it had the actual possession of the property and that the defendants entered upon the land intentionally and that they did so after being forbidden to do so by an agent or employee of the corporation who was authorized to tell them that they could not play golf, then, nothing else appearing, that would constitute a violation of the statute. However, although the State may prove beyond a reasonable doubt in a prosecution under this statute that the accused intentionally entered upon the land in the actual possession of the corporation after being forbidden to do so by an agent of the corporation and thereby establish as an ultimate fact that the accused entered the property without legal right, the accused may still escape conviction by showing as an affirmative defense that he entered under a bona fide claim of right.

Bona fide claim of right means a claim of right in good faith or bona fide itself means in good faith. That is to say, when the defendants seek to excuse an entry without legal right as one taking place under a bona fide claim of right, then the burden is upon such defendant to show two things: not beyond a reasonable doubt or even by the greater weight of the evidence, but merely to the satisfaction of the jury, first, that he believed he had a right to enter; and, second, that he had reasonable grounds for such belief.

Now, the defendants by their plea of not guilty deny their guilt of each and every element of the offense charged,

[fol. 85] but they further say and contend that even if it be found that the land in question was in the actual possession of the corporation and that they entered the land intentionally and that they did so and remained there after being forbidden to do so, they say that even if that be found that they did so under a bona fide claim of right and that they believed they had a right to enter and that they had reasonable grounds for such belief.

Now, as to that question which arises upon the evidence, I instruct you then, ladies and gentlemen of the jury, that under the law as determined by the United States Court and as pronounced by them, the Gillespie Golf Club, Inc., by leasing the land from the City of Greensboro to use as a golf course was subjected to the same obligations as the City of Greensboro would have been had it operated a golf course itself. It was subjected to the same rights as the City would have had, the same obligations and same responsibilities; that is to say, the law would not permit the City and, therefore, would not permit its lessee, the Gillespie Park Golf Club, Inc., to discriminate against any citizen of Greensboro in the maintenance and operation and use of a golf course. It could not exclude either defendant because of his race or for any other reason applicable to them alone; that is to say, they were entitled to the same rights to use the golf course as any other citizen of Greensboro would be provided they complied with the reasonable rules and regulations for the operation and maintenance and use of the golf course. They would not be required to comply with any unreasonable rules and regulations for the operation and maintenance and use of the golf course.

Now, if the defendants—and I am speaking of them as the six defendants, but actually what I am saying applies to each as an individual; that is to say, one defendant may have a right because of evidence relating to him which [fol. 86] another one may not have because—in other words, what I am trying to say is this: that the case against each defendant will be considered individually. Each defendant will be either convicted or acquitted, depending upon the evidence as it relates to such defendant, and the guilt or innocence of one defendant or either defendant will not

depend in any way whatever upon your finding as to any other defendant.

Exception #24:

If the corporation organized and known as the Gillespie Park Golf Club, Inc., if it maintained property and operated and used it for a golf course belonging to the City of Greensboro and if the defendant was a resident of the City of Greensboro, then he had the same right to become a member of the golf club as any other resident of Greensboro, if he was a member of another golf club which had a reciprocal agreement with the Gillespie Park Golf Club to permit members on one course or members of one club playing on the other course, then such defendant and each of them had the same right or had the right to play upon that Gillespie Park Course. If the defendants, or either of them, were guests of some members of the Gillespie Park Golf Club, then they had a right to play upon that course.

In other words, ladies and gentlemen of the jury, they had the same right under the laws as interpreted by the United States Courts to play on the golf course as any other citizen of the City of Greensboro provided they complied with the reasonable rules and regulations designed for the orderly maintenance and use of the golf course by the citizens of Greensboro.

Now, the State contends in that respect that the defendants, and each of them, had never applied for membership in the golf club. It contends that there was no reciprocal agreement between the Gillespie course and the Nocho course. It contends that the defendants are not members of the Carolina Golf Association or any other group which [fol. 87] under its bylaws would permit the defendants to play thereon. It contends that the defendants have not offered any evidence to indicate what the usual charges would be for a person coming there to play and that while they did say that and have offered evidence to the effect that each of them paid 75¢ by dropping it on the counter, the State contends that there is no evidence that that was the usual or necessary or customary charge for people playing even as guests of the club.

The State contends that there was no rule or regulation designed to keep any citizen of Greensboro from playing who would comply with the rules and regulations; that the charges were as set out in the bylaws and were reasonable; that the only requirement for membership was to make an application and to be passed by the Board of Directors, and I instruct you if the defendants had made such application, that it would have been unlawful for the Board of Directors to have declined such application simply because of their race, and therefore would not have been permitted in law to do so.

The State contends, members of the jury, that these defendants, without making application for membership, without seeking an invitation from any member of the club, without being a member of any club with the reciprocal playing rights agreement with the Gillespie Club, simply of their own volition went upon this property and were immediately told that they had no right to be there; that they knew that they had no right to be there and that notwithstanding that, that they intentionally and purposely and deliberately proceeded to play on the golf course, and after being told again by the manager and professional, that they continued to disregard the instructions of the agent of the corporation in possession of the land; so the State contends that it was a willful, intentional and deliberate trespass without any right and without any semblance of right on the part of the defendant.

Exception #24.

[fol. 88] The defendants on the other hand contend to the contrary. They contend that while they were not members of the club, that as citizens of Greensboro they had a right to go there and play; that they were members of a golf club which had a reciprocal agreement with the Gillespie Park Golf Club; that they paid what is the normal charge for playing golf by one who is not a member of the club. They contend that they did no more than they had a right to do and that there is no criminal act in asserting one's right in a peaceable and lawful manner.

I instruct you, members of the jury, if a party entering upon the land has a legal right to do so, of course, he may not be convicted of a trespass. Guilt can arise only where

he has no such right and can arise then or rather cannot arise, then if the defendant in good faith believed he had a right to go upon the golf course and if there was reasonable grounds for such belief.

Now, in that respect, the defendants contend that they had a right, but if they did not, as a matter of fact, that they believed they did; that their belief was in good faith; that one of the defendants had consulted a lawyer and had a letter delivered to him by a lawyer about a year and a half before then; that he had talked to members of the City Council; that he believed that he had a right to go upon the golf course and play and that he simply thought that Mr. Edwards and Mr. Bass were mistaken when they told him otherwise, and he contends that—or rather, they contend that they had reasonable grounds for such belief; that the law does not permit any discrimination among citizens concerning public facilities and that they knew this was a public facility and they believed that the club that they belonged to had a reciprocal playing agreement with the Gillespie Park Club; that there is no evidence from anyone that anybody had ever told them they couldn't play on that course until after they got there and then it was only [fol. 89] assistant to the professional, a man that they were not acquainted with at that time, and so they contend that their conduct, if wrongful, was bona fide, in good faith and based upon reasonable grounds to believe that they had a right to do what they did.

They contend that they gave no one any trouble, used no force, freely and voluntarily gave their names to the officer when they were requested to do so, and that they in a peaceable manner merely exercised their rights as citizens, so they contend that you should not find that they wrongfully entered in the first place, but that if you do, that you should be satisfied that they did so under a bona fide claim of right; that they believed they had a right and that their grounds for believing that were reasonable.

Now, members of the jury, each time that I have made reference to certain showings which the State contends are sufficient to justify a conclusion against the defendants, I have not in each instance made reference to the burden of proof, but so that I will not be misunderstood, the bur-

den of proving the defendants' guilt is always upon the State and never shifts, that is, the burden of satisfying you from the evidence and beyond a reasonable doubt of the defendants' guilt. However, if the State has satisfied you from the evidence and beyond a reasonable doubt that the land in question was in the possession of the corporation; that the defendant entered it intentionally and after being forbidden to do so by duly authorized agent of the corporation, that would be an establishment of the ultimate fact that they entered the property without legal right, and if you so find, then—first, if you fail to so find, of course, you would return a verdict of not guilty, but even if you do so find, then you will consider whether the defendants have satisfied you not beyond a reasonable doubt, nor even by the greater weight of the evidence, but you will consider [fol. 90] whether they have merely satisfied you that they entered under a bona fide claim of right; that is, first, that they believed they had a right to enter and had reasonable grounds for such belief, and if upon a consideration of that they have satisfied you that they believed they had a right to enter and had reasonable grounds for such belief, then you would return a verdict of not guilty. On the other hand, if the State has satisfied you from the evidence and beyond a reasonable doubt that the defendant entered the land, that is the golf course property, that it was in the actual possession of the corporation; that they entered the land intentionally, purposely and deliberately and that they did so after being forbidden by an agent duly authorized by the corporation, if you so find from the evidence beyond a reasonable doubt and if the defendants thereupon have failed to satisfy you that they believed they had a right to enter and had a reasonable ground for such belief, then you would return a verdict of guilty.

Now, members of the jury, you may, depending upon how you find, return a verdict of guilty against any one or more of the defendants or against all the defendants, or you may return a verdict of not guilty for one or more of the defendants or for all defendants. As I said earlier, the verdict of one is not dependent upon the verdict in the case of any other.

"Furthermore, in passing upon the guilt or innocence of the defendants, I instruct you that you will consider the reasonableness or the unreasonableness of the testimony of each of the witnesses. You will give to the testimony of each such weight and credibility as you find it deserves. You may consider all inferences which may legitimately be warranted by the evidence to the end that you may arrive at the truth.

Furthermore, I instruct you that your verdict will not be prompted in any manner whatsoever by the race of the [fol. 91] defendants. That has absolutely nothing to do with the case in law and should not be considered by you. Under the law, all citizens have equal rights and equal responsibilities in the maintenance and use of public facilities, that is facilities maintained by the governmental unit in which they live, and therefore the fact that the defendants are Negroes certainly may not be considered to their prejudice nor to the prejudice of the State. In other words, ladies and gentlemen, you will consider the evidence as you recall and understand it to be with the law as I have attempted to instruct you the law to be, and arrive at a verdict which is fair, which is just and which speaks the truth.

Court: Is there anything else that the defendants or the State would like me to call to the attention of the jury?

Mrs. Kennedy: No.

Mr. Kornegay: No.

Court: You may retire, ladies and gentlemen, and make up your verdict.

IN SUPERIOR COURT OF GUILFORD COUNTY

MOTION TO SET ASIDE THE VERDICT

Now come the defendants and each of them, all being Negro citizens of the City of Greensboro, North Carolina, through counsel, and make the following motion: That the verdict rendered by the jury against the above-named movants, defendants in this case, be set aside, that the Court withhold and arrest judgment and discharge the defendants notwithstanding the verdict, or grant the defendants a new

trial, and as grounds for this motion defendants respectfully show to the Court the following:

I. Defendants incorporate in this motion by reference the Motion to Quash heretofore filed herein, and respectfully pray the Court to grant this motion for the reasons set forth in said Motion to Quash, except insofar as the grounds stated therein may have been waived by these defendants.

[fol. 92] II. That the Supremacy Clause (Article VI) of the Constitution of the United States requires this Court to give effect to and to enforce the judgments of the United States Courts covering the subject matter of this prosecution, particularly the "Decree and Injunction" of the United States District Court for the Middle District of North Carolina, in Civil Case No. 1058, in which these defendants were plaintiffs and Gillespie Park Golf Club, Inc., was one of the defendants, covering the identical acts and conduct charged by the State to be a crime of trespass in this case, said "Decree and Injunction" reading in part as follows:

"It is now ordered, adjudged and decreed that defendants have unlawfully denied the plaintiffs as residents of the City of Greensboro, North Carolina, the privileges of using the Gillespie Park Golf Course, and that this was done solely because of the race and color of the plaintiffs, and constitutes a denial of their constitutional rights, and unless restrained will continue to deny plaintiffs and others similarly situated."

That the State of North Carolina and its Jury in this case undertake to find to be criminal the identical acts and conduct which said "Decree and Injunction" holds to be protected by the Constitution of the United States, and further undertake to find to have been lawfully done, that which said "Decree and Injunction" holds was "unlawfully done," and that to permit said verdict to stand and to punish these defendants on the basis of said verdict would nullify and render ineffectual the rights of these defendants which said "decree and injunction" holds to be guaranteed and protected by the Constitution and laws of the United States, including the due process and equal protection clauses of the 14th Amendment.

III. That a written opinion was handed down in the said case in the United States District Court for the Middle [fol. 93] District of North Carolina by United States District Judge Johnson J. Hayes, which opinion is reported in 149 Fed. Supp. 562, and in which Judge Hayes said of the identical acts and conduct which the verdict finds to be criminal in this case, the following.

"This golf club permits white people to play without being members, or otherwise, except it requires the payment of greens fees. The plaintiffs here paid their fees, were forced off the course by being arrested for trespass. Everybody knows this was done because the plaintiffs were Negroes and for no other reason. This Court cannot ignore it."

Defendants respectfully request this Court to take judicial notice of this matter of common knowledge pertaining to this public golf course owned and operated by their agency by the City of Greensboro and the Greensboro City Board of Education. That this matter of common knowledge about the Gillespie Park Golf Course was spoken truly and not idly by Judge Hayes when he wrote that "everybody knows" it was shown by Jurors in this case in their answers to questions touching their qualifications. Those who had played on Gillespie Park Golf Course stated very frankly and freely in open court that they had played on this course without any requirements except the payment of greens fees. Defendants respectfully suggest that, if any confirmation of Judge Hayes' statement that this was common knowledge which "everybody knows" is necessary it is found in these statements of the Jurors in this case.

Defendants respectfully suggest to the Court that to permit this verdict to stand under these circumstances would violate the rights of these defendants under the Constitution and laws of the United States, including the due process and equal protection clauses of the 14th Amendment.

IV. That said "Decree and Injunction" of the United States District Court for the Middle District of North Carolina begins as follows:

"This cause coming on for hearing and the Court having heard the evidence and argument of counsel and carefully

considered the same and the briefs filed, and having made the findings of fact and conclusions of law which appear of record."

Defendants respectfully suggest to the Court that this reference in said "Decree and Injunction" to the findings of fact and conclusions of law which appear of record makes them a part of the "Decree and Injunction" just as if written out therein in full; and for this reason and also because said findings of fact and conclusions of law are a part of the record and judgment roll in said case in the United States District Court for the Middle District of North Carolina covering the identical acts and conduct which said verdict seeks to make a crime, the Supremacy Clause of the Constitution of the United States lays a duty upon this Court to respect and give effect to said findings of fact and conclusions of law, and especially to Finding of Fact 33, which reads as follows:

"White citizens of Greensboro are given the privilege of becoming permanent members by paying $60.00 per year without green fees and others not permanent members by paying $1.00 per year and green fees of $.75, except on holidays and weekends, when it is more. On days other than holidays and weekends when green fees are $1.25 white citizens are permitted to play without being members by paying the fees above set forth and without paying the extra $1.00 and without any questions being put to them. When the plaintiffs applied to be given the same privilege they were refused on the ground that they were not members but primarily because of their color. Plaintiffs laid the green fees on the table in the club house, went out to play and after they had gotten to the 3rd hole the 'pro' in charge of the golf course ordered them off and they insisted they had a right to play and would not get off unless they were [fol. 95] arrested by an officer, whereupon the 'pro' had them arrested and they were tried and convicted and sentenced to imprisonment for a period of 30 days, which is the maximum under the law for the State of North Carolina for trespassing."

Defendants further respectfully show to the Court that on these facts Judge Hayes said in his opinion the following:

"Citizenship in the United States imposes uniform burdens, such as paying taxes and bearing arms for the preservation and operation of our government. In like manner, whatever advantages or privileges one citizen in the United States may enjoy through his liberty becomes the constitutional right of each citizen and without regard to race, color or creed. These principles of law have been fully and elaborately established in the Fourth Circuit Court of Appeals and by the Supreme Court of the United States and must be adhered to in this case."

Defendants respectfully suggest to the Court that the verdict in this case not only does not adhere to these principles, but if permitted to stand would seek to thwart and nullify these principles; and that said verdict should be set aside to permit said principles to be adhered to and vindicated.

V. That the evidence in this case and the instructions of the Court to the Jury show that the land on which Gillespie Park Golf Course is situated is public and not private property, whereas G S 14-134, which is the North Carolina statute under which the warrants were drawn in this case, is meant to cover private property and not public property. Said statute reads:

"If any person after being forbidden to do so shall go or enter upon the lands of another, without a license therefor, he shall be guilty of a misdemeanor, . . . "

Defendants respectfully suggest to the Court that this [fol. 96] statute was never intended to apply to public lands or public property, but was and is intended to apply solely and only to private property, and that the lands and property and the possession alleged to have been invaded in this case was public lands and property and the possession of an agency of the City of Greensboro and the Greensboro City Board of Education, which held the title to said lands and property. In this connection defendants respectfully call the Court's attention to Finding of Fact #30 in said case in the United States District Court for the Middle District of North Carolina:

"That the leases in this case undertook to turn over to a corporation having no assets or income highly valuable income-producing property belonging to the City and the school board, the chief officer and promoter of said corporation being an official of the city, and the city having no prospect of getting anything from said leases except out of the income which the leased property was already bringing in, and with the City reserving the right to put into the property further investments from other sources than said income and that under these circumstances said corporation was in fact an agency of the City and the school board for the continued maintenance and operation of the golf course for the convenience of the citizens of Greensboro."

Defendants further suggest to the Court that as citizens and taxpayers of the City of Greensboro, these defendants along with all other such citizens and taxpayers did have a license to go upon said lands upon which said Golf Course was situated, and that there is no evidence whatsoever in this case that these defendants were "without a license" to go upon or to remain upon said lands, and that the absence of such a license is an indispensable ingredient of the trespass established by G S 14-134.

[fol. 97] VI. Defendants further respectfully urge the Court to set aside the verdict in this case because of error in the Court's instructions to the Jury. In this connection, defendants respectfully suggest that in its instructions to the Jury the Court treated the Bylaw regulations of Gillespie Park Golf Club, Inc., governing eligibility for playing and use of the Golf Course as, and gave the Jury the impression that said Bylaw regulations governed entry upon and remaining upon the lands on which the Golf Course is situated, whereas in truth and in fact said Bylaw regulations show on their face that they have to do only with play and use of the Golf Course, and they do not even pretend to forbid any citizen of Greensboro or elsewhere to enter upon or to remain upon the lands involved. If these Bylaw regulations should have the latter effect, they would forbid all other persons than those named to visit the Golf Course as spectators upon these public lands.

Defendants further suggest that it was error for the Court in its instructions to give the Jury the impression

that G S 14-134 was intended to make a misdemeanor of non-compliance with rules and regulations governing the use of public lands, which is all that the Bylaw rules and regulations for playing on Gillespie Park Golf Course purport to do.

Respectfully submitted, this the 10th day of February, 1958.

/s/ Annie Brown Kennedy, /s/ Harold L. Kennedy, /s/ C. O. Pearson, /s/ William A. Marsh, Attorneys for Defendants.

The above motion was Denied.
Exception by the defendants.

[fol. 98]

IN SUPERIOR COURT OF GUILFORD COUNTY

ASSIGNMENTS OF ERROR

Defendants assign for error the following:

Assignment of Error 1: The action of the Court, as set out in Exception #1 (R. p. 28), in overruling defendants' motion to Quash the Warrants before the defendants entered a plea.

Assignment of Error 2: The action of the Court, as set out in Exception #2 (R. p. 41), in sustaining the State's objection to testimony of Clyde Bass as follows:

Q. Why didn't they play?
A. I had nothing to do with them not playing.

Mr. Kornegay: Objection.
Court: Sustained.

Assignment of Error 3: The action of the Court, as set out in Exception #3 (R. pp. 42-43), in permitting Ernest Edwards to testify as follows:

Q. Now, state, sir, what relation, if any there was between the Gillespie Park Golf Club, Inc. and the Golf Course which you have described as located presently in Greensboro

and bounded by Asheboro Street and Troy Street and Randolph Avenue.

Mrs. Kennedy: Objection.
The Court: Overruled.

A. The Gillespie Park Golf Club, Inc. was in possession of the Golf Course on December 7, 1955.

Assignment of Error 4: The action of the Court, as set out in Exception #4 (R. p. 45), in sustaining the State's objection to the testimony of Ernest Edwards as follows:

Q. Did any Negroes play during the time you were employed by Gillespie Park Golf Course while you were there? Do you know of your own knowledge whether or not a Negro has played on the Gillespie Park Golf Course during the time you were employed by this association?

Mr. Kornegay: Objection as being immaterial.
Court: Sustained.

[fol. 99] Assignment of Error 5: The action of the Court, as set out in Exception #5 (R. p. 46), in sustaining the State's objection to testimony of Ernest Edwards as follows:

Q. Did the persons talking with you concerning this new employment tell you under what authority they were taking over?

Mr. Kornegay: Objection.
Court: Sustained.

Assignment of Error 6: The action of the Court, as set out in Exception #6 (R. p. 47), in overruling defendants' motion for a judgment as of nonsuit at the close of the State's evidence.

Assignment of Error 7: The action of the Court, as set out in Exception #7 (R. p. 48), in sustaining the State's objection to testimony of George Simkins, Jr., as follows:

Q. Doctor, as a result of your communications with your attorney, did she make her findings known to you?
A. Yes.

Q. And as a result of those findings, did you have an opinion satisfactory to yourself that you should go to the Gillespie Park Golf Course?

Mr. Kornegay: Objection,
Court: Sustained.

Assignment of Error 8: The action of the Court, as set out in Exception #8 (R. p. 48), in sustaining the State's objection to the testimony of George Simkins, Jr., as follows:

Q. As a result of your conversation or communication with your attorney did you feel that you had a right to play golf at Gillespie Park Golf Course?

Mr. Kornegay: Objection.
Court: Sustained.

Assignment of Error 9: The action of the Court, as set out in Exception #9 (R. p. 50), in permitting George Simkins, Jr., on cross-examination, to testify as follows:

Q. Three of the men weigh over 200 pounds, don't they?

[fol. 100] Mr. Marsh: Objection.
Court: Overruled.

A. That's right. Three of the men do weigh over 200 pounds.

Assignment of Error 10: The action of the Court, as set out in Exception #10 (R. p. 50), in allowing George Simkins, Jr., on cross-examination, to testify as follows:

Q. Who was that lawyer?

Mr. Kennedy: Objection.
Court: Overruled.

A. Mrs. Elrita Alexander.

Assignment of Error 11: The action of the Court, as set out in Exception #11 (R. p. 52), in sustaining the State's objection as follows:

Q. And got a declaratory injunction?

Mr. Kornegay: Objection.
Court: Sustained.

Assignment of Error 12: The action of the Court in sustaining the State's objection to the testimony of George Simkins, Jr., on redirect examination, as follows:

Q. Were the other defendants seated here associated in that case?

Mr. Kornegay: Objection.
Court: Sustained.

Assignment of Error 13: The action of the Court in sustaining the State's objection to the testimony of George Simkins, Jr., on redirect examination, as follows:

Q. As a result of your actions and the decisions in that case do you feel that . . .

Mr. Kornegay: Objection.
Court: Let him finish his question.

Q. As a result of your actions and the result of the decisions in that case, do you feel that you still have a right to play at Gillespie Park Golf Course?

Mr. Kornegay: Objection.
Court: Sustained.

[fol. 101] Assignment of Error 14: The action of the Court, as set out in Exception #14, in refusing to allow John R. Hughes to be called as witness under G S 8-50 (R. pp 70-71):

Mr. Marsh: We have one further thing, may it please the Court. We issued a subpoena duces tecum to the President of the Gillespie Park Golf Club Association to bring over the bylaws of the corporation. I want to know if they have been brought.

Mr. Kornegay: They are here.

Mr. Marsh: May it please the Court, I should like to have marked as defendants' Exhibit 8 the Bylaws of the Gillespie Park Golf Club, Inc., and specifically Section 2, which relates to the use of the golf facilities.

Mr. Kornegay: I am objecting to it unless they are identified or something.

Court: Mr. Hughes said he had them and handed them to him. Do you want him to call Mr. Hughes to the stand and say they are? I'll let him do that.

Mr. Kornegay: Of course, Mr. Hughes stood up, but so far there has been no identification of the minutes insofar as this court is concerned or the record. It was just a statement here.

Court: Sustained.

Mr. Marsh: We will call Mr. Hughes under G S 8-50 as an adverse witness.

Court: You can call him if you want to call him as a witness. I am not passing on G S 8-50 at this time. I don't want any misunderstanding about it; do you want to call him as your witness?

Mr. Marsh: I want to call him to identify this as being the proper document.

Court: I am not asking you why you put him on the stand. I am asking you, do you want to call him as a witness?

Mr. Marsh: No, I don't want him as a witness.

Court: All right, have a seat then, Mr. Hughes. Any further evidence?

Mr. Marsh: Yes. We call Mr. Hughes.

Exception #14.

[fol. 102] Assignment of Error 15: The action of the Court, as set out in Exception #15 (R. p. 74), in permitting John R. Hughes to testify as follows:

Q. What was the purpose of that corporation?

A. The purpose of the corporation was to operate the golf club for the members of the club, their invited guests and members of the Carolina Golf Association.

Mr. Marsh: Objection. Documentary evidence is the best evidence.

Court: Overruled. The objection came after he had answered the question. Go ahead.

Assignment of Error 16: The action of the Court, as set out in Exception #16 (R. p. 75), in permitting John R. Hughes to testify on cross-examination as follows:

Q. Are you familiar with the membership of the Carolina Golf Association?

A. I was of the date of the 5th of December, 1955.

Q. As of December 5, 1955?

Mr. Marsh: I think it is irrelevant. The Golf Association is not at issue in this case.

Court: Go ahead.

Assignment of Error 17: The action of the Court, as set out in Exception #17 (R. p. 75), in permitting John R. Hughes, on cross-examination, to testify as follows:

Q. Was the Nocho Park Golf Club, Inc. a member of the Carolina Golf Association on that date?

Mr. Marsh: Objection.

Court: Overruled.

A. No, sir, it was not.

Assignment of Error 18: The action of the Court, as set out in Exception #18 (R. pp. 75-76), in allowing John R. Hughes to testify as follows:

Q. Did any of these defendants on the 7th day of December, 1955, or any date prior thereto file with the Gillespie Park Golf Association an application for memberships?

[fol. 103] Mr. Marsh: Objection.

Court: Overruled.

A. No, sir, they did not to my knowledge.

Assignment of Error 19: The action of the Court, as set out in Exception #19 (R. p. 76), in refusing to allow John R. Hughes, on redirect examination to be cross-examined under G S 8-50:

Q. Mr. Hughes, I hold in my hand a document purporting to be a transcript of the testimony in the case.

Mr. Kornegay: Objection.

Court: Bear in mind that he is your witness.

Mr. Marsh: I called him under 8-50.

Court: I told you that you could call him as your witness. I'll be glad to read any statute you have. (After reading) The objection is sustained.

Assignment of Error 20: The action of the Court, as set out in Exception #20 (R. p. 76), in sustaining the State's objection to the testimony of John R. Hughes as follows:

Q. You say, I believe, that you were President of the Gillespie Park Golf Club, Inc.?

A. I am.

Q. As such, you are interested in the continuation of that association?

Mr. Kornegay: Objection.

Court: Sustained.

Mr. Marsh: If your Honor please, I want to show that he is a hostile witness.

Court: I have sustained the objection.

Assignment of Error 21: The action of the Court, as set out in Exception #21 (R. p. 76), in sustaining the State's objection to the testimony of John R. Hughes, as follows:

Q. Prior to your organization of the Gillespie Park Golf Club, Inc., were you not Director of and Chairman of City Recreation of the City of Greensboro?

Mr. Kornegay: Objection.

Court: Sustained.

[fol. 104] Assignment of Error 22: The action of the Court, as set out in Exception #22 (R. p. 77), in sustaining the State's objection to Defendants' Exhibits 6 and 7:

Mrs. Kennedy: If your Honor please, we'd like, if possible, to have a ruling on whether or not these would be admissible.

Court: I am going to sustain the objection as to those two Exhibits, that is #6 and #7.

Assignment of Error 23: The action of the Court, as set out in Exception #23 (R. p. 77), in refusing to grant defendants' motion for judgment as of nonsuit at the close of all the evidence.

Assignment of Error 24: The action of the Court, as set out in Exception #24 (R. pp. 86-87), in charging the jury as follows:

"If the corporation organized and known as the Gillespie Park Golf Club, Inc., if it maintained property and operated and used it for a golf course belonging to the City of Greensboro and if the defendant was a resident of the City of Greensboro, then he had the same right to become a member of the golf club as any other resident of Greensboro; if he was a member of another golf club which had a reciprocal agreement with the Gillespie Park Golf Club to permit members on one course or members of one club playing on the other course, then such defendant and each of them had the same right or had the right to play upon that Gillespie Park Course. If the defendants, or either of them, were guests of some members of the Gillespie Park Golf Club, then they had a right to play upon that course.

"In other words, ladies and gentlemen of the jury, they had the same right under the laws as interpreted by the United States Courts to play on that golf course as any other citizen of the City of Greensboro provided they complied with the reasonable rules and regulations designed for the orderly maintenance and use of the golf course [fol. 105] by the citizens of Greensboro.

"Now, the State contends in that respect that the defendants, and each of them, had never applied for membership in the golf club. It contends that there was no reciprocal agreement between the Gillespie course and the Nocho course. It contends that the defendants are not members of the Carolina Golf Association nor any other group which under its bylaws would permit the defendants to play thereon. It contends that the defendants have not offered any evidence to indicate what the usual charges would be for a person coming there to play and that while they did say that and have offered evidence to the effect that each of them paid 75¢ by dropping it on the counter, the State contends that there is no evidence that that was the usual or necessary or customary charge for people playing even as guest of the club.

"The State contends that there was no rule or regulation designed to keep any citizen of Greensboro from playing who would comply with the rules and regulations; that the charges were as set out in the bylaws and were reasonable; that the only requirements for membership was to make an

application and to be passed by the Board of Directors, and I instruct you if the defendants had made such application, that it would have been unlawful for the Board of Directors to have declined such application simply because of their race, and therefore would not have been permitted in law to do so.

"The State contends, members of the jury, that these defendants, without making application for membership, without seeking an invitation from any member of the club, without being a member of any club with the reciprocal playing rights agreement with the Gillespie Club, simply of their own volition went upon this property and were immediately told that they had no right to be there; that they knew that they had no right to be and that notwithstanding that, that they intentionally and purposely and [fol. 106] deliberately proceed to play on the golf course, and after being told again by the manager and professional, that they continued to disregard the instructions of the agent of the corporation in possession of the land; so the State contends that it was a willful, intentional and deliberate trespass without any right and without any semblance of right on the part of the defendant."

Assignment of Error 25: The action of the Court, as set out in Exception #25 (R. pp. 91-97), in overruling the defendants' motion to set aside the verdict as being contrary to the greater weight of the evidence.

The foregoing is tendered by the defendants as their case on appeal to the Supreme Court.

This 21st day of March, 1958.

Annie Brown Kennedy, Harold L. Kennedy, William A. Marsh, Jr., C. O. Pearson, Attorneys for Defendant Appellants.

Service of the foregoing case on appeal is hereby accepted and receipt of a copy thereof is hereby acknowledged.

This 21st day of March, 1958.

Horace R. Kornegay, Solicitor, 18th Judicial District.

In Superior Court of Guilford County

Stipulations

It Is Stipulated and Agreed by and between the Solicitor for the State of North Carolina, Horace R. Kornegay, and the attorneys for the defendants, Annie Brown Kennedy, Harold L. Kennedy, C. O. Pearson, and William A. Marsh, Jr., that the foregoing shall constitute the case on appeal to the Supreme Court in this cause.

[fol. 107] It is further stipulated that the service of this case on appeal and the counter-case on appeal were made in apt time.

This the 4th day of April, 1958.

Horace R. Kornegay, Solicitor.
Harold L. Kennedy, Annie Brown Kennedy, William A. Marsh, Jr., C. O. Pearson, Attorneys for Defendant Appellants.

(Transcript Certified by Clerk Superior Court)

[fol. 147]

IN THE SUPREME COURT OF NORTH CAROLINA

SPRING TERM, 1958

No. 582—Guilford

STATE

v.

PHILLIP COOKE

STATE

v.

LEON WOLFE

STATE

v.

GEORGE SIMKINS, JR.

STATE

v.

JOSEPH STURDIVENT

STATE

v.

SAMUEL MURRAY

STATE

v.

ELIJAH H. HERRING

OPINION—Filed June 4, 1958

Appeal by defendants from Fountain, S. J., February 3, 1958 Criminal Term of Guilford (Greensboro Division).

On 2 December 1957 a warrant issued from the Greensboro Municipal-County Court for Phillip Cooke, charging that on 7 December 1955 he "did unlawfully and willfully enter and trespass upon the premises of Gillespie Park Club, Inc., after having been forbidden to enter said premises."

Similar warrants were on the same day issued for each of the other defendants.

Defendants moved in the Municipal-County Court to quash the warfants. Their motions were overruled. They [fol. 148] then entered pleas of not guilty. The court, after hearing the evidence, found each defendant guilty and imposed sentence. Defendants appealed to the Superior Court.

Attorney General Seawell and Assistant Attorney General Moody for the State.

Annie Brown Kennedy, Harold L. Kennedy, William A. Marsh, Jr., and C. O. Pearson for defendant appellants.

Rodman, J. The cases were, without objection, consolidated for trial in the Superior Court.

Before pleading to the merits in the Superior Court, defendants renewed their motions to quash as originally made in the Municipal-County Court. The motions made in apt time were overruled by the court.

Before considering the merits of the cases, we must ascertain if defendants were properly called upon to answer the criminal charges leveled against them. The motions to quash assign three reasons why defendants should not be called upon to answer the allegation that they violated the criminal laws of the State of North Carolina.

S. v. Cooke, 246 NC 518, 98 SE 2d 885, is relied upon for two of the three reasons assigned. An examination of that case is necessary to assay the merits of the motions. The crime with which defendants stand charged is a misdemeanor punishable by fine of $50 or imprisonment for thirty days, G.S. 14-134. The Municipal-County Court has jurisdiction of the offense charged. In December 1955 these defendants were charged in warrants issuing from that court with trespassing on the property of *Gillespie Park Golf Course*. They were convicted and appealed to the Superior [fol. 149] Court. That court's jurisdiction of the cases then before it was derivative and not original. In the exer-

cise of its derivative jurisdiction, it was confined to an inquiry as to the truth of the charges contained in the warrants issuing from the Municipal-County Court. It could not, in the exercise of that jurisdiction, try defendants for a different crime. Nevertheless, the warrants were amended in the Superior Court to charge defendants with a trespass on the property of *Gillespie Park Golf Club, Inc.* Defendants were convicted of the crime charged in the amended warrants. Defendants appealed their conviction to this Court. We held that the amended warrant, by substituting another property owner, charged a different crime from the crime originally charged, and for that reason the Superior Court could not, in the exercise of its derivative jurisdiction, try defendants on the new criminal charge.

Since the conviction by a court without jurisdiction to hear and determine the guilt or innocence of defendants was a nullity and the sentence imposed void, defendants could thereafter be tried when properly charged in a court having jurisdiction. S. v. Hicks, 233 NC 511, 64 SE 2d 871, cert. den. 342 US 381, 96 L ed 629. It is manifest there is here no double jeopardy. Green v. United States, 355 US ——, 2 L ed 199, on which defendants rely, has no application to the facts here presented. Double jeopardy is a valid defense when established by the facts. N. C. Constitution, Art. I, sec. 17; S. v. Mansfield, 207 NC 233, 176 SE 761. Where not disclosed by allegations of the bill or warrant, it is not a ground to quash.

In closing the opinion in the previous appeal, the writer, author of the opinion, said: "Defendants may, of course, [fol. 150] now be tried under the original warrant since the court was without authority to allow the amendment changing the crime charged; or they may be tried on bills found in the Superior Court for the crime attempted to be charged by the amendment."

The last clause of that opinion is also relied on in the motion to quash. The statement, accurate as to most of the counties of the State, is inaccurate with respect to Guilford and the other counties enumerated in the proviso to G.S. 7-64. The Legislature, in the exercise of its discretion, has denied to the Superior Court sitting in the counties named in the proviso to G.S. 7-64 the right to exercise con-

current jurisdiction with inferior courts in the trial of misdemeanors. Because of the limitations so imposed on the jurisdiction of the Superior Court of Guilford County, it could not exercise original jurisdiction of the crime charged, namely, trespass after being forbidden, and if defendants were to be prosecuted for the trespass presently charged, the prosecution had to originate in a court inferior to the Superior Court. This is made clear in the concurring opinion of Justice Parker, who said: "It seems plain that a verdict of conviction or acquittal on the warrants in this case as drawn would not be a bar to the new warrants in the form to which they were changed by the amendments."

The third and final reason assigned for quashing the warrants is the refusal of the court to take judicial notice of a judgment in a suit by defendants against the City of Greensboro, the Greensboro City Board of Education, and Gillespie Park Golf Club, Inc. (Simkins v. City of Greensboro, 149 [fol. 151] F Supp. 562) which adjudged the plaintiffs in that suit had been denied the privilege of using the property involved in that litigation because of their color or race. A motion to quash is a proper method of testing the sufficiency of the warrant, information, or bill of indictment to charge a criminal offense. It is not a means of testing the guilt or innocence of the defendant with respect to a crime properly charged. "The court, in ruling on the motion, is not permitted to consider extraneous evidence. Therefore, when the defect must be established by evidence *aliunde* the record, the motion must be denied." S. v. Cochran, 230 NC 523, 53 SE 2d 665; Richardson v. State, 4 SW 2d 79; 27 Am Jur 695.

Since none of the reasons nor all combined sufficed to sustain the motion to quash, the court correctly overruled the motion and put defendants on trial for the offense with which they were charged.

To invade property in the possession of another is a crime under our laws. The severity of the punishment for such invasion is measured by the character of the entry. But the essential ingredient in the crime is possession by the person named in the warrant. If the possession is actual, the State need only establish that fact, but if the State fails to establish actual possession, it must establish

a right to possession which by operation of law implies possession. S. v. Clyburn, 247 NC 455; S. v. Cooke, *supra;* S. v. Baker, 231 NC 136, 56 SE 2d 424.

Defendants do not controvert the fact that the corporation named in the warrant had physical possession of the property nor do they deny that over the protest of the agent of the corporation they took possession. The conduct [fol. 152] depicted and not denied would suffice to convict defendants of a forcible trespass. G.S. 14-126. It could easily have resulted in a serious breach of the peace. The State did not, however, charge them with that offense. It charged only the less grave offense of entry after being forbidden. As a defense to that charge, it is sufficient for defendants to establish that they entered under a *bona fide* belief of a right to so enter, which belief had a reasonable foundation in fact. S. v. Paggart, 170 NC 737, 87 SE 31; S. v. Wells, 142 NC 590; S. v. Fisher, 109 NC 817, but the burden is on the defendant to establish facts sufficient to excuse his wrongful conduct. S. v. Durham, 121 NC 546; S. v. Wells, *supra.* There was nothing in the State's evidence showing or tending to show any right on the part of defendants to enter after having been forbidden to do so. Hence the court correctly refused to allow defendants' motion for nonsuit.

Defendants offered in evidence a lease dated 19 April 1949 from the Board of Trustees of the Greensboro City Administrative Unit to Gillespie Park Golf Club, Inc. This lease recited that the property therein described had in 1947 been leased to the City of Greensboro so that the city might operate a golf course thereon, that Greensboro had agreed to cancel its rights under the lease, that lessor was of the opinion that it would not need the property for school purposes during the next ensuing five years and "since a nine-hole golf course has been laid out thereon, the Board of Trustees is of the opinion that it is advisable to lease the property to the Golf Club in order that its use as a golf course may be continued during the term of this lease, such use being, in the opinion of the Board of Trustees, a public [fol. 153] or semipublic use." The lease was for a period of five years at a rental of $1000 per annum, but with a provision that lessor might cancel upon sixty days' notice

if the property was needed for school purposes or if lessor desired to sell. An extension agreement was put in evidence extending lessee's term. The asserted trespass occurred during the extended term.

There is evidence that lessee had, during its term, expended more than $100,000 in enlarging the course from a nine-hole course to an eighteen-hole course, constructing a club house, and making other improvements. Defendants offered in evidence bylaws adopted by lessee. The only two which may have any pertinency to this action are sections 1 and 2 of article 1. They provide: "SECTION 1—Membership. Membership in this corporation shall be restricted to members who are approved by the Board of Directors for membership in this Club. There shall be two types of membership; one, the payment of a stipulated fee of $30.00 or more, plus tax, shall cover membership and greens fees. The other type of membership shall be $1.00, plus tax, but this type of member shall pay greens fees each time he uses the course. The greens fees and the amount of membership fees may be changed by the Board of Directors at any time upon two-thirds vote of the members of the Board. SECTION 2—Use of Golf Facilities. The golf course and its facilities shall be used only by members, their invited guests, members in good standing of other golf clubs, members of the Carolina Golf Association, pupils of the Professional and his invited guests."

The City Administrative Unit, a governmental agency separate and distinct from the City of Greensboro, had no [fol. 154] authority to operate recreational facilities which were not in some way related to the operation of the public school system. The Legislature created both County and City Administrative Units "for purposes of school administration." G.S. 115-4. The Administrative Unit, having acquired more land than was presently needed for school purposes, had legislative authority to lease the surplus. G.S. 115-126(5), Cline v. Hickory, 207 NC 125, 176 SE 250 p. 38 Am Jur 169. In the exercise of its discretion it could in good faith lease for a public or a private purpose. Prior to its lease to Gillespie Park Club, it had leased the property to the City of Greensboro. The City had apparently used it for recreational purposes and had erected a golf course thereon. When that lease terminated, the school

authorities leased to a private corporation, but in their lease were careful to state that lessee was taking and would use it for public or semipublic purposes, namely, the operation of a golf course. Having expressly declared that the use which the lessee would make was a public or semipublic use, the law will presume the parties intended and contemplated that the property should be used without unlawful discrimination because of race, color, religion, or other illegal classification. "It is an elementary rule of construction that parties will be presumed to have used language effectuating a lawful purpose rather than one which is unlawful." Beasley v. R.R., 145 NC 272; Newberry v. City of Andalusia, 57 So 2d 629. Since the operator of the golf club was charged with making a public or semipublic use of the property, it could not deny the use of the property to citizens simply because they were Negroes. This Court gave definite recognition to the principle of equality of [fol. 155] treatment as between whites and Negroes nearly three quarters of a century ago. Puitt v. Commissioners, 94 NC 709.

Dawson v. Mayor and City Council of Baltimore City, 220 F 2d 386; Lawrence v. Hancock, 76 F Supp. 1004; Tate v. Department of Conservation and Development, 133 F Supp 53; Culver v. City of Warren, 83 NE 2d 82, cited and relied upon by appellants are but applications of an established legal principle to the factual situations found to exist in each of those cases. This case in no wise questions the soundness of the legal principles there enunciated.

Since the decision in Brown v. Board of Education, 347 US 483, 98 L ed 873, 74 S Ct 686, separation of the races in the use of public property cannot be required. Judge Fountain expressly charged the jury that defendants could not be discriminated against because of color. He charged: "Now as to that question which arises upon the evidence, I instruct you then, ladies and gentlemen of the jury, that under the law as determined by the United States Court and as pronounced by them, the Gillespie Golf Club, Inc., by leasing the land from the City of Greensboro to use as a golf course was subjected to the same obligations as the City of Greensboro would have been had it operated a golf course itself. It was subjected to the same rights as the

City would have had, the same obligations and same responsibilities; that is to say, the law would not permit the City and, *therefore, would not permit its lessee, the Gillespie Park Golf Club, Inc., to discriminate against any citizen of Greensboro in the maintenance and operation and use of a golf course. It could not exclude either defendant because of his race or for any other reason applicable to* [fol. 156] *them alone;* that is to say, they were entitled to the same rights to use the golf course as any other citizen of Greensboro would be provided they complied with the reasonable rules and regulations for the operation and maintenance and use of the golf course. They would not be required to comply with any unreasonable rules and regulations for the operation and maintenance and use of the golf course."

It will be observed that Judge Fountain, in his charge, treated the lease as though it were made by the City of Greensboro in the exercise of one of its corporate functions. In fact the lease was made by the school unit which had no duty or right to operate a golf course but which voluntarily provided for public use.

The court further charged: "If the corporation organized and known as the Gillespie Park Golf Club, Inc., if it maintained property and operated and used it for a golf course belonging to the City of Greensboro and if the defendant was a resident of the City of Greensboro, then he had the same right to become a member of the golf club as any other resident of Greensboro, if he was a member of another golf club which had a reciprocal agreement with the Gillespie Park Golf Club to permit members on one course or members of one club playing on the other course, then such defendant and each of them had the same right or had the right to play upon the Gillespie Park Course. If the defendants, or either of them, were guests of some members of the Gillespie Park Golf Club, then they had a right to play upon that course.

"In other words, ladies and gentlemen of the jury, they had the same right under the laws as interpreted by the United States Courts to play on the golf course as any [fol. 157] other citizen of the City of Greensboro provided they complied with the reasonable rules and regulations

designed for the orderly maintenance and use of the golf course by the citizens of Greensboro."

He further charged, after stating defendants' contentions with respect to their right to play: "I instruct you, members of the jury, if a party entering upon the land has a legal right to do so, of course he may not be convicted of a trespass."

Defendants moved to set aside the verdict of guilty. As the basis for their motion they rely on Simkins v. City of Greensboro, *supra*, decided by the United States District Court in March 1957. Although defendants had the record in that case identified, they did not offer it in evidence. It is not a part of the record presented to us. Our knowledge of the facts in that case is limited to what appears in the published opinion.

Examining the opinion, it appears that ten people, six of whom are defendants in this action, sought injunctive relief on the assertion that Negroes were discriminated against and were not permitted to play on what is probably the property involved in this case. We do not know what evidence plaintiffs produced in that action. It is, however, apparent from the opinion that much evidence was presented to Judge Hayes which was not before the Superior Court when defendants were tried. It would appear from the opinion that the entry involved in this case was one incident on which plaintiffs there relied to support their assertion of unlawful discrimination, but it is manifest from the opinion that that was not all of the evidence which Judge Hayes had. We are left in the dark as to other [fol. 158] incidents happening prior or subsequent to the conduct here complained of, which might tend to support the assertion of unlawful discrimination. On the facts presented to him, Judge Hayes issued an order enjoining racial discrimination in the use of the golf course. Presumably that order has and is being complied with. No assertion is here made to the contrary.

To support their motion, defendants say in their brief: "That to allow the verdict to stand would amount to a collateral attack on the Federal decision." The mere assertion that a court of this State has not given due recognition to a judgment rendered by one of our Federal courts merits serious consideration.

The State challenges the assertion that there has been an attack, collateral or otherwise, on the judgment rendered by the District Court. It maintains that the questions to be answered are these: (1) Should a court take judicial knowledge of facts found at another time by another court in another action; and if this question be answered in the affirmative, (2) is the State, in a criminal prosecution, concluded by facts found in a civil action to which it is not a party?

Since defendants for reasons best known to themselves elected not to offer in evidence the record in the Federal court case, it is apparent that the first question propounded must be answered. Unless we are to depart from previous adjudications by this Court and similar decisions by the Federal courts and the courts of sister States, the answer to that question must be no.

Speaking with respect to judicial notice, Chief Justice Marshall said: "The looseness which would be introduced into judicial proceedings would prove fatal to the great [fol. 159] principles of justice, if the judge might notice and act upon facts not brought regularly into the cause. Such a proceeding, in ordinary cases, would subvert the best established principles, and overturn those rules which have been settled by the wisdom of ages." U.S. v. Wilson, 7 Pet. 150, 8 L ed 640.

Mr. Justice Miller said: "While it is certainly true that the pendency of a suit in one court is not a defense, though it may sometimes be good in abatement, to another suit on the same cause of action in another court of concurrent jurisdiction, it may be considered as established that when a judgment is recovered against the defendant in one of those courts, if it is a full and complete judgment on the whole cause of action, it may be pleaded as a defense to the action in that court where it is pending and undecided. Neither court would be bound to take notice of the judgment in the other court judicially." Schuler v. Israel, 120 US 506, 30 L ed 707. To like effect see S. v. McMilliam, 243 NC 775, 92 SE 205; Reid v. Holden, 242 NC 408, 88 SE 2d 125; Hampton v. Pulp Co., 223 NC 535, 27 SE 2d 538; Daniel v. Bellamy, 91 NC 78; Bluthenthal v. Jones, 208 US 64, 52 L ed 390; Williams-Perry v. Reeder, 17 NW 2d 98; Naffah v. City Deposit Bank, 13 A 2d 63; Belyeu v. Bow-

man, 41 So 2d 290; James v. Unknown Trustees, Etc., 220 P 2d 831; Swak v. Department of Labor & Industries, 240 P 2d 560; Paridy v. Caterpillar Tractor Co., 48 F 2d 166; Morse v. Lewis, 54 F 2d 1027; Helms v. Holmes, 129 F 2d 263; Atlantic Fruit Co. v. Red Cross Line, 5 F 2d 218; Polzin v. National Co-op Refinery Ass'n., 266 P 2d 293; Divide Creek Irrig. Dist. v. Hollingsworth, 72 F 2d 859, 96 ALR 937, with annotations; White v. Central Dispensary & [fol. 160] Emergency Hospital, 99 F 2d 355, 119 ALR 1002; Robinson v. Baltimore & O. R. Co., 222 US 506, 56 L ed 288; 31 CJS 627; 20 Am Jur 102.

Because the judgment in the case of Simkins v. Greensboro was not in evidence, the court had no knowledge in a legal sense of any facts there determined, and could make no pronouncement of law with respect to facts which were not in evidence. Judge Hayes' published opinion was available. That opinion is a declaration of the law on the facts which Judge Hayes found.

Since the court was not required to take judicial notice of the judgment in the civil action, we are not called upon to determine the effect which should have been given if offered in evidence.

When the doctrine of collateral estoppel should be applied is not always easily solved. In Van Schuyver v. State, 8 P 2d 688, it was held that a judgment in a civil action between prosecuting witness and defendant which determined the ownership of domestic fowl could not be used by the defendant in a criminal action to estop the State from prosecuting him on a charge of larceny. Similar conclusions have been reached in other jurisdictions with respect to the ownership of property. State v. Hogard, 12 Minn 293; People v. Leland, 25 NYS 943; Hill v. State, 3 SW 764 (Tex.).

It is said in the annotation to Mitchell v. State, 103 Am St Rep 17: "When the previous judgment arose in a case in which the state or commonwealth was the prosecutor or plaintiff and the defendant in the case at bar was also the defendant, and the judgment was with reference to a subject which is material to the case at bar, the doctrine of res judicata applies. (citations) But where the judgment to which it is sought to apply the doctrine of res judicata

[fol. 161] was rendered in a civil proceeding to which the state was not a party, or in a criminal proceeding to which the defendant in the case at bar was not a party, the doctrine of res judicata does not apply.. (citations)"

The Supreme Court of the United States has recognized and applied the law as there announced to differing factual situations. Compare U. S. v. Baltimore & O. R. Co., 229 US 244, 57 L ed 1169, and Williams v. N. C., 325 US 226, 89 L ed 1577. Other illustrations may be found in: S. v. Dula, 204 NC 535, 168 SE 836; Warren v. Ins. Co., 215 NC 402, 2 SE 2d 17; Powers v. Davenport, 101 NC 286; S. v. Boland, 41 NW 2d 727; People v. McKenna, 255 P 2d 452; S. v. Morrow, 75 P 2d 737; S. v. Cornwell, 91 A 2d 456; S. v. Greenberg, 109 A 2d 669. Extensive annotations appear as a note to Green v. State, 87 ALR 1251; 30A Am Jur 518. Defendants were not, as a matter of right, entitled to have the verdict set aside.

The exceptions to the admission and exclusion of evidence have been examined. We have found none which indicates prejudicial error or appears to warrant discussion.

We find

No error.

[fol. 162]

IN THE SUPREME COURT OF NORTH CAROLINA

SPRING TERM, 1958

No. 582—Guilford County

STATE

v.

PHILLIP COOKE, LEON WOLFE, GEORGE SIMPKINS, JR., JOSEPH STURDIVENT, SAMUEL MURRAY and ELIJAH H. HERRING

JUDGMENT—June 4, 1958

This cause came on to be argued upon the transcript of the record from the Superior Court, Guilford County: Upon consideration whereof, this Court is of opinion that

there is no error in the record and proceedings of said Superior Court.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable William B. Rodman, Justice, be certified to the said Superior Court, to the intent that the proceedings be had therein in said cause according to law as declared in said opinion. And it is considered and adjudged further, that the defendants and surety to the appeal bond, Southern Fidelity Mutual Insurance Company, do pay the costs of the appeal in this Court incurred, to wit, the sum of One hundred and 20/100 dollars ($100.20), and execution issue therefor.

[fol. 169] [File endorsement omitted]

IN THE SUPREME COURT OF NORTH CAROLINA

SPRING TERM, 1958

No. 582

Eighteenth District

STATE

v.

PHILLIP COOKE, et al.

MOTION AND AFFIDAVIT SUGGESTING DIMINUTION OF THE RECORD—Filed April 29, 1958

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of North Carolina:

Now comes appellants, Phillip Cooke, Leon Wolfe, George Simkins, Jr., Joseph Sturdivent, Samuel Murray, Elijah H. Herring in the above-entitled cause and through their attorneys Annie Brown Kennedy and Harold L. Kennedy, make the following motion suggesting a diminution of the record herein and say:

1. That this is a criminal trial on warrants charging each of the defendants with entering and trespassing upon the land of another without license, after having been forbidden to do so. The cases were consolidated for trial. The defendants were convicted in the Municipal-County Court of Greensboro from which they appealed to the Guilford County Superior Court, where they were likewise convicted, from which they appealed to the North Carolina Supreme Court which appeal is now pending.

2. The Attorney General, before presenting the State's argument in these cases on April 29, 1958, first made a motion to dismiss the action based on the fact that the record does not disclose that the appeals from the Municipal County Court were properly perfected. This Motion was the first notice given defendants concerning this point inasmuch as said point was not discussed in the State's brief.

3. The record does not disclose what action was taken by either court in defendants' Motion To Quash.

4. That it is necessary for a proper determination of this appeal that the following portions of the proceedings had in the Courts below be brought before this Court, to wit:

The Records of the Municipal County Court of December 16, 1957 which show that upon conviction of the defendants, [fol. 170] each of them in open court gave notice of appeal at which time the Court recognized the defendants for the next term of Superior Court and continued each of them on their bond.

The records of the Municipal County Court of Greensboro of December 16, 1957, which show that defendants made a Motion to Quash before pleas were entered, said motion having been in writing and having been filed with the Clerk of Municipal Court, which motion was denied. Said motion was based upon the same rights and matters as the motion made in Superior Court and as printed on pages 28-32 of the record in this Court. That said motion was not filed as a part of the record of this Court, but its

existence is determinative of certain issues now pending before this Court.

The records of the Guilford County Superior Court of February 6, 1958, which show that the defendants made a Motion to Quash before pleas were entered and said motion was denied. The Motion made in Superior Court is the same motion that appears on pages 28-32 of the printed record of this Court. That this verified document be read and accepted both as a Motion and Supporting Affidavit.

Wherefore, appellants respectfully pray that this verified document be read and accepted both as a Motion and Supporting Affidavit and suggest a diminution of the record to the extent hereinbefore set out and that this Court shall direct the Municipal County Court of Greensboro, N. C. and the Superior Court of Guilford County, N. C. to certify and transmit to this Court the aforementioned records to be made part of the record upon this appeal.

This the 29th day of April, 1958.

/s/ Annie Brown Kennedy, /s/ Harold L. Kennedy,
Attorneys for Appellants.

[fol. 171] Verification

North Carolina
Wake County

Harold L. Kennedy, being first duly sworn, deposes and says: that he is one of the attorneys for the defendants in the foregoing annexed Motion and Affidavit Suggesting Diminution of the Record; that he has read and knows the contents thereof; that the things stated therein are true of his own knowledge, except those things alleged and stated upon information and belief, and as to those things he believes it to be true;

That he signs this verification as attorney for defendants because as attorney for defendants, he has more personal and intimate knowledge of the matter herein alleged, said matter being matter chiefly of law and of legal inferences.

/s/ Harold L. Kennedy, Affiant.

Subscribed and sworn to before me this 29th day of April, 1958.

/s/ Agnes K. Parker, Notary Public. My commission expires: 9-11-59.

(Seal)

A True Copy: /s/ Adrian J. Newton, Clerk of Supreme Court of North Carolina.

[fol. 172] [File endorsement omitted]

IN THE SUPREME COURT OF NORTH CAROLINA

SPRING TERM, 1958

No. 582

Eighteenth District

STATE

v.

PHILLIP COOKE, et al.

ANSWER TO MOTION SUGGESTING DIMINUTION OF THE RECORD—Filed April 30, 1958

The Attorney General, answering the Motion of the defendants Suggesting Diminution of the Record, for his Answer says:

(1) It is admitted that this is a criminal trial charging the defendants with criminal trespass for entering on the lands of another without license and after being forbidden, and that the defendants were convicted in the Municipal-County Court of Greensboro; that as shown from the record and case on appeal filed by the defendants in the office of the Clerk of the Supreme Court, the defendants did not properly effect their appeal from the Municipal-County Court of Greensboro to the Superior Court of Guilford County; that except as herein admitted the allegations of Paragraph 1 of the Motion are denied.

(2) It is admitted that the Attorney General made a Motion to Dismiss the action for that the record does not

disclose properly effected appeals from the Municipal-County Court to the Superior Court of Guilford County. It is further admitted that this Motion was made in open court with the statement on the part of the Attorney General that the Motion would be reduced to writing and that this point was not discussed in the State's Brief.

(3) It is admitted that the record does not disclose what action was taken in either Court upon defendants' Motion to Quash; the Attorney General alleges, however, that a Motion Suggesting Diminution of the Record cannot now be maintained an account of actions or transactions which may or may not have taken place in the Municipal-County Court.

(4) Answering the allegations of Paragraph 4, the Attorney General alleges that the case on appeal was settled and the defendants caused such parts of the record to be certified to this Court as they desired, and they cannot [fol. 173] now bring in additional portions of the record and especially the defendants cannot now bring in portions of the record from the Municipal-County Court since the defendants do not even allege that these parts of the record desired were ever certified to the Superior Court of Guilford County; that while the defendants allege that their Motion to Quash in the Municipal-County Court was made before pleas were entered and said Motion was in writing and filed with the Clerk of said Court they do not allege that it was ever certified to the Superior Court of Guilford County, and the Attorney General further alleges that the line of authority of this Court goes to the Superior Court of Guilford County and not to actions and transactions in the Municipal-County Court; it is further alleged by the Attorney-General that even if a Motion to Quash was made by the defendants and was denied by the Superior Court the same is not proper for that it appears from an inspection of the Motion that it deals with matters and things outside of the record which require for support extraneous evidence or matters that are required to be established by evidence aliunde the record, and, therefore, under the rulings of this Court when this type of defect is alleged the Motion must be denied (*State* v. *Cochran*, 230 N. C. 523; *State* v. *Brewer*, 180 N. C. 716).

Motion

The Attorney General moves to dismiss this appeal for that the jurisdiction of the Superior Court of Guilford County is derivative and the record certified to the Superior Court of Guilford County from the Municipal-County Court does not show that there was any proper notice of appeal from the Judgment of the Municipal-County Court in these actions, and no proper notice of appeal appearing in the record the cases of these defendants were never properly before the Superior Court of Guilford County.

Wherefore, having fully answered, the Attorney General prays the Court that the defendants' Motion Suggesting [fol. 174] Diminution of the Record be dismissed and that the Attorney General's Motion to Dismiss these appeals be allowed.

/s/ Malcolm B. Seawell, Attorney General of North Carolina; /s/ Ralph Moody, Assistant Attorney General.

North Carolina
Wake County

Ralph Moody, being duly sworn, says that he is Assistant Attorney General of North Carolina and verifies this Motion and Answer in behalf of the State; that he has read the foregoing Motion and Answer, and the same is true to his own knowledge except as to matters and things therein stated upon information and belief, and as to those matters and things he believes it to be true.

/s/ Ralph Moody, Assistant Attorney General.

Subscribed and sworn to before me on this the 30th day of April, 1958.

/s/ Adrian J. Newton, Clerk of the Supreme Court of North Carolina.

(Seal)

A True Copy: /s/ Adrian J. Newton, Clerk of Supreme Court of North Carolina.

[fol. 175] [File endorsement omitted]

IN THE SUPREME COURT OF NORTH CAROLINA

SPRING TERM, 1958

No. 582

Eighteenth District

STATE

v.

PHILLIP COOKE, et al.

REPLY TO MOTION TO DISMISS—Filed May 7, 1958

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of North Carolina:

Replying to the Motion of the Attorney General to dismiss the appeal in this case, the appellants respectfully show to this Honorable Court as follows:

1. The presence or absence of jurisdiction cannot be made the subject of stipulation, *Mason* v. *Commissioners of Moore*, 229 N.C. 626, 628, and therefore the stipulation of the Solicitor and the appellants concerning the record is not material on this point.

2. Trials on appeal from the Greensboro Municipal-County Court are entirely de novo, and upon the original papers which it is the duty of the Clerk of said Court to send to the Superior Court only when due notice of appeal has been given. It cannot be questioned that the Clerk sent up the papers on appeal, or that the appeal was received in the Superior Court, or that it was docketed and tried at the next term of Superior Court. (Record pages 2-22)

It should be presumed that the Clerk of the Municipal-County Court did his duty and that he would not have sent the original papers to the Superior Court for trial de novo unless due notice of appeal had been given. But, even if this Honorable Court should be unwilling to indulge in

that presumption, appellants respectfully suggest that the question of notice of appeal should be inquired into at least to the extent which was done in the case of *Mason* v. *Commissioners of Moore*, 229 N.C. 626, 627, where Mr. Justice Barnhill said for the Court:

"To guard against the possibility there may have been an error in transcribing the record, the Clerk of this Court communicated with the Clerk of the Superior Court of Moore County for the purpose of having him check the [fol. 176] record here against the original. He, in response, filed in this Court the original judgment together with the accompanying appeal entries from which it appears that the record below is as certified."

Also in *Aycock* v. *Richardson*, 247 N.C. 234, Per Curiam, this Court said, "Moreover, the Clerk of this Court at its direction has obtained from the Clerk of Superior Court of Cabarru County a certificate in which he certifies that: I have examined the minutes in the above entitled action; that said minutes contain no entries of appeal either by the plaintiff or by the defendants."

This Honorable Court has supervisory powers over all of the inferior Courts of this State (Article IV, Section 8, Constitution of North Carolina), and if this Court is unwilling to indulge the presumption that the Clerk of the Municipal-County Court obeyed rather than disobeyed his duty in sending up the original papers to the Superior Court for a trial de novo, then appellants feel that this Honorable Court in the exercise of its supervisory powers should inquire into the fact of notice of appeal in the Courts below, since the actions of the Clerk of the Municipal-County Court were wholly within the control of that State official and beyond any control of these defendants.

3. There are involved in this case grave questions under the Constitution and Laws of the United States, including the duty of all State Courts to take judicial notice of and to consider themselves bound by said Constitution and Laws as interpreted by the Courts of the United States upon the identical facts involved in this case, and decision upon such questions should not be avoided merely because

of failure of the Clerk of Municipal-County Court to record on the original papers sent up to the Superior Court that the requisite notice of appeal had been given which gave him the authority to send up said papers and to docket said case on appeal. To have sent said original papers up for a trial de novo in the Superior Court without notice of appeal having been given by appellants would have been a violation of the duty of the Clerk to send papers only after due notice of appeal; and appellants should not be made the victims of any such alleged disobedience if it should appear to exist.

Wherefore, premises considered, appellants pray this [fol. 177] Honorable Court to indulge the presumption that the Clerk of Municipal-County Court would not have sent up the original papers for trial de novo unless due notice of appeal had been given by appellants in the Municipal-County Court, and that said appeal would not have been docketed and tried at the next term of court unless the Clerk had done his duty in sending up said appeal; and in the alternative appellants pray that, in the exercise of its supervisory powers over all inferior Courts in this State, this Honorable Court take appropriate steps to determine the facts concerning the giving of notice of appeal by these appellants in the Municipal-County Court.

Appellants further pray that the motion of the Attorney General to dismiss this appeal be in all things denied.

This the 2nd day of May, 1958.

Attorneys for Appellants.

[fol. 178] Verification

North Carolina
Forsyth County

Harold L. Kennedy, being first duly sworn, deposes and and (sic) says: That he is one of the attorneys for the defendants in the foregoing annexed Reply to Motion to Dismiss; that he has read and knows the contents thereof; that the things stated therein are true of his own knowledge, except those things alleged and stated upon information and belief, and as to those things he believes it to be true;

That he signs this verification as attorney for defendants because as attorney for defendants, he has more personal and intimate knowledge of the matter herein alleged, said matter being matter of law and of legal inference.

/s/ Harold L. Kennedy, Affiant.

Subscribed and sworn to before me this 3rd day of May, 1958.

/s/ Melinda L. Lash, Notary Public. My commission expires September 9, 1958.

(Seal)

A True Copy: /s/ Adrian J. Newton, Clerk of Supreme Court of North Carolina.

[fol. 182]

IN THE SUPREME COURT OF NORTH CAROLINA

SPRING TERM, 1958

No. 582

Eighteenth District

STATE

v.

PHILLIP COOKE, et al.

MOTION TO TAKE JUDICIAL NOTICE—Filed May 8, 1958

Upon the argument of this case on Tuesday, April 29, 1958 the appellants offered, solely for the convenience of the Court and in connection with the question of judicial notice certified copies of certain records in the United States Courts, concerning construction of the Constitution and Laws of the United States upon the identical facts involved in this appeal.

The Court seemed to regard said offer as one to submit evidence on appeal and questions from the Bench seemed to indicate to appellants the possibility that the judicial proceedings in the United States Courts involving the sub-

ject-matter of this case could not be considered by this Court unless they appeared of record as evidence in this case.

Under these circumstances, appellants make this motion respectfully requesting this Honorable Court to take judicial notice of the Constitution and Laws of the United States as interpreted by the United States Courts in *George Simkins, Jr. et al.* vs. *City of Greensboro et al.*, 149 Fed. Supp. 562, being No. 1058 in the United States District Court for the Middle District of North Carolina, affirmed by the Court of Appeals of the United States for the Fourth Circuit in No. 7450, *City of Greensboro et al.* vs. *George Simkins, Jr. et al.*, 246 Fed. 2nd 425.

Appellants respectfully suggest to this Honorable Court that the Courts of the United States in said proceedings have construed the Constitution and Laws of the United States in such a way as to make lawful the identical conduct on the part of these appellants which the Courts of North Carolina in this case below have held to be a crime under a statute of this State, although the contrary construction by the Courts of the United States was duly called to the attention of the State Courts below, it having [fol. 183] been held by the United States Courts that the Constitution and Laws of the United States protected and made lawful the identical conduct of these appellants which the State Courts below have held to constitute a crime under a North Carolina statute. Appellants contended below and here respectfully suggest to this Honorable Court that it was and is the duty of all State Courts to take judicial notice of the Constitution and Laws of the United States as construed by the Courts of the United States in said judicial proceedings identified above. As an example of the different construction placed upon the Constitution and laws of the United States upon the identical conduct sought to be made a crime by the State Courrs (sic) below in this case, these appellants quote the following from the opinion of the United States District Court in 149 Fed. Supp. 562:

> "The six plaintiffs presented themselves at the desk of the man in charge of the golf course and laid down 75¢ each and asked to play, the first named plaintiff

being a dentist and practicing his profession in Greensboro. But they were not given permission to play. They insisted on their right to play and played three holes. While playing the third hole, the manager came and ordered them to leave and they refused to go unless an officer arrested them. Whereupon the manager swore out a warrant charging each with trespass upon which they were tried, convicted and sentence to 30 days in jail, the Statutory limit, from which an appeal is pending in the Supreme Court of North Carolina."

"The Negroes have not only been denied the privilege of the golf course but there is no intention on the part of the defendants to permit them to do so unless they are compelled by order of court."

"This golf club permits white people to play without being members or otherwise, except it requires the prepayment of green fees. The plaintiffs here paid their fees, were forced off the course by being arrested for trespass. Everybody knows this was done because the plaintiffs were Negroes and for no other reason. This court can not ignore it."

"A decree will be entered declaring that these plaintiffs have been denied on account of their color, equal privileges to use the golf course owned by the City Board of Education and the City of Greensboro and operated by the Gillespie Park Golf Club, and permanently restraining the defendants from discriminating against plaintiffs and other members of their race on account of color, so long as the golf course is owned by these agencies and operated for the pleasure and health of the public, their agents, lessees, servants and employees."

[fol. 184] In connection with the duty of State Courts to take judicial notice of the Constitution and Laws of the United States as construed by the Courts of the United States, appellants respectfully quote the following from the opinion of this Honorable Court in the case of *Mangum* v. *Atlantic Coast Line Railway*, 188 N. C. 689:

"Other rules of the Interstate Commerce Commission make the railroad responsible for the design, construction and maintenance of locomotives and tenders, and all parts thereof, under its control.

It is not necessary for the plaintiff to plead or prove the aforementioned statutes as the Court will take judicial notice thereof.

In 25 Ruling Case Law, sec. 209, it is stated:

"Judicial notice will be taken of public acts of Congress, not only by the courts of the United States, but by the courts of the several states and territories. Federal statutes need not be pleaded in the state courts. In construing a Federal statute, a state court is bound by the construction placed on it by the Federal courts." Seaboard Air Line Railway Co. v. Duval, 225 U. S., p. 477.

A fortiori, judicial notice will be taken of the various provisions of the Constitution of the United States as interpreted by the Courts of the United States.

Wherefore, premises considered, appellants respectfully pray this Honorable Court to take judicial notice of the Constitution and Laws of the United States as construed by the United States District Court for the Middle District of North Carolina and the United States Court of Appeals for the Fourth Circuit in the judicial proceedings identified above.

This 7th day of May, 1958.

/s/ Annie Brown Kennedy, /s/ Harold L. Kennedy,
Attorneys for Defendants.

[fol. 185] [File endorsement omitted]

IN THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

No. 582—Guilford

PHILLIP COOKE, LEON WOLFE, GEORGE SIMKINS, JR., JOSEPH STURDIVANT, SAMUEL MURRAY, and ELIJAH H. HERRING, Appellants

v.

STATE OF NORTH CAROLINA

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—Filed August 27, 1958

1. Notice is hereby given that Phillip Cooke, Leon Wolfe, George Simkins, Jr., Joseph Sturdivant, Samuel Murray, and Elijah H. Herring, the appellants above named, hereby appeal from the final order of the Supreme Court of North Carolina affirming and finding no error in the judgment of conviction and sentence of said appellants, which judgment and sentence were entered by the Superior Court of Guilford County, North Carolina, on February 10, 1958, and the opinion of the Supreme Court of North Carolina affirming and finding no error in said judgment of conviction and sentence having been filed in the office of the Clerk of the Supreme Court of North Carolina on June 4, 1958, and the final order pursuant to said opinion having been entered as of the same date as said opinion.

This appeal is taken pursuant to 28 USC Sec. 1257 (2).

Appellants have been tried twice upon two separate and successive sets of warrants in the Municipal-County Court of Greensboro, Guilford County, North Carolina, for the same acts of playing golf on the public municipal Gillespie Park Golf Course, the crime charged on each occasion being that of simple trespass under Section 14-134 of the General Statutes of North Carolina (1953). The first trial resulted in conviction and sentence to a fine of $15. On appeal and trial de novo in the Superior Court of Guilford County, North Carolina, there was a jury trial and verdict

of guilty and a sentence of 30 days in jail. On appeal to the Supreme Court of North Carolina the judgment of the Superior Court was arrested, not upon any ground set up by appellants, but because the Supreme Court found that the Superior Court lost jurisdiction and its actions were a nullity when it permitted the warrants to be amended to change the name of the prosecuting witness from Gillespie Park Golf Course to Gillespie Park Golf Club, Inc. No further action was taken either by the Supreme Court [fol. 186] or the Superior Court with reference to the original warrants and judgment and sentence in the Municipal-County Court.

Thereafter, on December 2, 1957, entirely new warrants, charging appellants with the same offense were issued in the Municipal-County Court of Greensboro, Guilford County, North Carolina. The trial in Municipal-County Court resulted again in conviction and the sentence was 30 days in jail, to be suspended upon the payment by each appellant of a fine of $1. Upon a trial de novo upon appeal to the Superior Court of Guilford County, North Carolina, there was a jury verdict of guilty and the Court's judgment and sentence of 15 days in jail. On appeal the Supreme Court of North Carolina affirmed and found no error in the trial, judgment and sentence.

Appellants are presently enlarged upon bail in the sum of $200 each and a stay of execution by a Justice of the Supreme Court of North Carolina.

II. The Clerk of the Supreme Court of North Carolina will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The Record in this cause as printed and filed for use of the Supreme Court of North Carolina upon appeal during the Spring Term of 1958, No. 582, coming from the Superior Court of Guilford County, North Carolina, and all other papers which were before said Supreme Court upon said appeal.

2. The Opinion of the Supreme Court of North Carolina which was filed in this cause on June 4, 1958.

3. The final order affirming and finding no error in the proceedings of the Superior Court of Guilford County, entered as of June 4, 1958.

4. Any and all orders staying execution in this cause.

5. This Notice of Appeal to the Supreme Court of the United States, with Proof of Service of same.

III. The following questions are presented by this appeal:

1. Is Section 14-134 of the General Statutes of North Carolina (1953), as construed and applied by the State Courts in this case, unconstitutional under the Constitution of the United States, including the Supremacy Clause (Art. 6, Cl. 2), and also including the Fourteenth Amendment as interpreted by the United States District Court for the Middle District of North Carolina in George Simkins et al. v. City of Greensboro et al., 149 Fed. Supp. 562, [fol. 187] and by the Court of Appeals for the Fourth Circuit affirming in City of Greensboro et al. v. George Simkins et al. 246 Fed. 2d 425?

2. Could the State agencies in this case, namely, City of Greensboro, Greensboro City Board of Education, and Gillespie Park Golf Club, Inc., consistent with the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States, promulgate written regulations converting the public municipal Gillespie Park Golf Course, originally constructed with the Federal Government providing 65 per cent of the cost, into a private-club membership-only golf course, excluding all citizens who did not meet the membership rules? and do the membership rules as set out in the record thus limiting the use and enjoyment of this public municipal golf course, having been promulgated by State agencies, violate the Equal Protection Clause of the Fourteenth Amendment? and, said State agencies having adopted a written rule making eligible to play on said public municipal golf course "members in good standing of other golf clubs," could the State agencies operating the golf course, consistent with the Equal Protection Clause of the Fourteenth Amendment,

arbitrarily in practice limit use and enjoyment of the golf course to those "members in good standing of other golf clubs," whose golf clubs were members of the Carolina Golf Association?

3. Was it the duty of the State Courts in this case to accept as true the allegations asserting appellants' Federal rights in their motion to quash the warrants and in their motion to set aside the verdict and for judgment notwithstanding the verdict, in view of the fact that the State did not answer to deny or controvert any of said allegations?

4. In its opinion in this case the Supreme Court of North Carolina having said, with reference to the Federal case cited in Question No. 1 above, that "Our knowledge of the facts in that case is limited to what appears in the published opinion," and having also said that "It would appear from the opinion that the entry involved in this case was one incident on which plaintiffs there relied to support their assertion of unlawful discrimination," was it the duty of the State Courts in this case, under the Supremacy Clause (Art. 6, Cl. 2) of the Constitution of the United States, to consider and give effect to all of the facts set forth in said opinion of the Federal Court, and having taken judicial notice of said opinion, was it also the duty of [fol. 188] the State Courts under the Supremacy Clause to take judicial notice of the Federal Court's Findings of Fact, Conclusions of Law, and Declaratory Judgment, in order to determine the extent to which the acts and conduct held by the State Courts to be a crime in this case were held by the Federal Courts to be protected by the Fourteenth Amendment to the Constitution of the United States?

5. The Supreme Court of North Carolina having held on May 7, 1958 in State v. Perry, 248 N. C. 334, that the unconstitutionality of a jury panel under the Constitution of the United States could be shown by evidence upon a motion to quash the indictment, was it a discrimination against the Federal rights asserted by appellants in this case for the State Courts to deny the request made by the appellants in their motion to quash the warrants and again in their motion to set aside the verdict, for an opportunity

to present the record in the Federal case cited in Question No. 1 above upon the hearing of said motions?

6. Was it a discrimination against and an infringement upon the Federal rights asserted by appellants in this case for the State Courts to refuse to give effect to Finding of Fact No. 30 and Finding of Fact No. 33 in the Federal case cited in Question No. 1 above, both of which Findings of Fact were quoted verbatim in appellants' motion to set aside the verdict, and the State not having answered to deny or controvert the allegations of said motion in any way?

7. The Supreme Court of North Carolina having held consistently prior to this case that said Section 14-134 of the General Statutes of North Carolina did not apply to public lands but only to "the possession or right of possession of real estate privately held," (State v. Clyburn, 247 N. C. 455), was it a discrimination against the Federal rights asserted by appellants for the North Carolina Supreme Court to depart from this rule and hold that the statute did apply to the alleged trespass upon the public municipal golf course involved in this case?

8. The Supreme Court of North Carolina having approved in its opinion in this case the charge to the jury that "if a party entering upon the land has a legal right to do so, of course he may not be convicted of a trespass," and the Declaratory Judgment in the Federal case cited in Question No. 1 above having declared that the interference with and causing appellants to be arrested for playing on the golf course "was done solely because of the race [fol. 189] and color of the" appellants "and constitutes a denial of their constitutional rights," (said Declaratory Judgment being quoted verbatim in appellants' motion to set aside the verdict, and the State having not answered to deny or controvert said motion), was it a violation of the duty of the State Courts under the Supremacy Clause, and of the rights of appellants under the Fourteenth Amendment of the Constitution of the United States for the Supreme Court of North Carolina to hold in this case that the State Courts were not concluded by the Federal Court's determination of the "constitutional rights" of the appel-

lants, and to submit to the State's jury the determination of this Federal "legal right" of appellants under the Constitution of the United States to play on this public municipal golf course?

9. The Supreme Court of North Carolina having gone outside the record before it to find in its opinion in this case the true fact concerning the Federal case cited in Question No. 1 above that "defendants had the record in that case identified," did the Equal Protection Clause of the Fourteenth Amendment require the Court to note the further true fact that the records in said Federal case were in fact identified as "Defendants' Exhibits 6 and 7," in order that the Court might see the further true fact that said Exhibits 6 and 7 were in fact offered in evidence and their admission refused by the Trial Judge, as shown on Page 77 of the printed record before the Supreme Court of North Carolina?

10. Appellants having been tried twice upon two separate and different sets of warrants for the same alleged offense in the Municipal-County Court of Greensboro, Guilford County, North Carolina, and the first set of warrants and the conviction and sentence thereunder being still outstanding and undisposed of at the time of the issuance of the second set of warrants and the trial and conviction thereunder, does the second trial and conviction and sentence amount to the kind of double jeopardy which the 14th Amendment forbids as a denial of due process?

Dated this 27th day of August, 1958.

/s/ Harold L. Kennedy, /s/ C. O. Pearson.

[fol. 190] Proof of Service

I, T. W. Burton, Assistant Attorney General of the State of North Carolina, hereby acknowledge receipt of a copy of the foregoing Notice of Appeal to the Supreme Court of the United States, this the 27 day of August, 1958.

/s/ T. W. Burton

[fol. 191]

IN THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

STATE

v.

PHILLIP COOKE, LEON WOLFE, GEORGE SIMKINS, JR., JOSEPH STURDIVENT, SAMUEL MURRAY, and ELIJAH H. HERRING

Appeal docketed	5 April 1958
Case argued	29 April 1958
Opinion filed	4 June 1958
Final Judgment entered	4 June 1958

I, Adrian J. Newton, Clerk of the Supreme Court of North Carolina, do hereby certify the following is a full, true and perfect copy of the record and proceedings in the above-entitled case as the same now appear from the originals on file in my office:

1. Mimeographed record of the case — pages 1-107
2. Mimeographed copy of the brief of the defendants — pages 108-130
3. Mimeographed copy of the brief for the State, filed by the Attorney General — pages 131-146
4. The opinion of the Supreme Court of North Carolina filed June 4, 1958 — pages 147-161
5. Judgment of the Supreme Court of North Carolina in accordance with the opinion — page 162
6. Petition to stay execution of judgment dated July 12, 1958 — pages 163-164

7. Order of Stay pending determination on petition for writ of certiorari by the Supreme Court of the United States dated July 12, 1958 pages 165-166

8. Order of Stay pending appeal dated August 28, 1958 pages 167-168

9. Motion and Affidavit suggesting diminution of the record, filed April 29, 1958 pages 169-171

10. Answer to motion suggesting diminution of the record by the Attorney General and motion to dismiss appeal, filed April 30, 1958 pages 172-174

11. Defendant's reply to motion to dismiss filed May 7, 1958 pages 175-178

[fol. 192]

12. Memorandum of Additional Authorities by the State pages 179-181

13. Motion to take judicial notice, filed May 8, 1958 pages 182-184

14. Notice of appeal to the Supreme Court of the United States, filed Aug. 27, 1958 pages 185-190

I further certify that the rules of this Court prohibit the filing of petitions to rehear in criminal cases.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of North Carolina, this the ninth day of October, 1958.

/s/ Adrian J. Newton, Clerk, Supreme Court of the State of North Carolina.

(Seal)

[fol. 193]

SUPREME COURT OF THE UNITED STATES

No. 466, October Term, 1958

PHILLIP COOKE, LEON WOLFE, GEORGE SIMKINS, et al.,
Appellants,

vs.

STATE OF NORTH CAROLINA

Appeal from the Supreme Court of the State of North Carolina.

ORDER POSTPONING JURISDICTION—January 12, 1959

The statement of jurisdiction in this case having been submitted and considered by the Court, further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits.

Mr. Justice Frankfurter took no part in the consideration or decision of this case.

LE COPY

FILED
OCT 22 1958
JAMES R. BROWNING, Clerk

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1958

No. [redacted]

PHILLIP COOKE, LEON WOLFE, GEORGE SIMKINS, JR., JOSEPH STURDIVENT, SAMUEL MURRAY, and ELIJAH H. HERRING, Appellants

vs.

STATE OF NORTH CAROLINA

Appeal from the Supreme Court of the State of North Carolina

STATEMENT AS TO JURISDICTION

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INDEX

	Pages
Opinions in Court below:	
Cited	1
Reproduced	42-53, 55-59
Jurisdictional Grounds:	
Nature of Proceeding	2
Judgment Appealed from:	
Date of Entry	2
Reproduced	54
Petition for Rehearing not Permitted	2
Notice of Appeal:	
Date Filed	2
Reproduced	60-66
Statute Conferring Jurisdiction	2
Cases Sustaining Jurisdiction	2-4
Questions Presented	4-8
Statement of the Case:	
Facts Material to Questions Presented	8-16
Raising of Federal Questions:	
Motion to Quash	16-19
Excluding Federal Court Records	19-20
Motion to Set Aside Verdict	20-28
Substantiality of Federal Questions:	
Generally	28-30
Supremacy Clause and Judicial Notice	30-32
Federal Records Reproduced for Judicial Notice	67-79
Pleadings Setting up Federal Rights	33-34
Discrimination against Federal Rights	34-35
Due Process and Equal Protection aside from Racial Exclusion	35-36
Changing Meaning of Criminal Statute	37
Evidence of Racial Discrimination	37-38
Double Jeopardy under 14th Amendment	38-39

Pages

Reasons for Plenary Consideration 39-40
Conclusion 40-41

Tables of Cases Cited

Aaron v Cooper and Cooper v Aaron, ____US____ (Decided September 29, 1958) 3, 32
Aycock v Richardson, 247 NC 234, 100 SE 2d 379 .. 3, 35
Brock v North Carolina, 344 US 424, 429, 97 L ed 456, 460, 73 S Ct 349 ..... 3, 39
Brown v Board of Education, 344 US 1, 97 L ed 3, 73 S Ct 1 ..... 3, 31-32
City of Greensboro v Simkins, 246 Fed 2d 425 4
Eubanks v Louisiana, 356 US 584, 2 L ed 2d 991, 994, 78 S Ct 970 ..... 3, 37
Franklin National Bank v New York, 347 US 373, 98 L ed 767, 74 S Ct 550 ..... 3, 30
Hoag v New Jersey, 356 US 464, 2 L ed 2d 913, 917, 78 S Ct 829 ..... 3, 38
Lambert v California, 355 US 225, 2 L ed 2d 228, 231, 78 S Ct 240 ..... 3, 37
Lilly v Grand Trunk Western Ry Co., 317 US 481, 488, 87 L ed 411, 417, 63 S Ct 347 ..... 3, 31
Marsh v Alabama, 326 US 501, 509, 90 L ed 265, 270, 66 S Ct 276, 280 ..... 2, 28-29
Mason v Commissioners of Moore, 229 NC 626, 627, 51 SE 2d 6 ..... 3, 35
NAACP v Alabama, 357 US 449, 2 L ed 2d 1488, 1495, 78 S Ct 1163 ..... 3, 35
Niemotko v Maryland, 340 US 268, 271, 95 L ed 267, 270, 71 S Ct 325, 327 ..... 2, 30
Pennsylvania v Board of Directors etc., 353 US 230, 1 L ed 2d 792, 77 S Ct 806 ..... 4, 41
Public Utilities Commission of California v United States, 355 US 534, 2 L ed 2d 470, 478, 78 S Ct 446 ..... 3, 30
Railway Employees Department etc. v Hanson, 351 US 225, 232, 100 L ed 1112, 1130, 76 S Ct 714 2, 30
Simkins v City of Greensboro, 149 Fed Supp 562 .... 4, 10-16

	Pages
Smith v O'Grady, Warden, 312 US 329, 331, 85 L ed 859, 61 S Ct 572	3, 31
State v Clyburn, 247 NC 455, 458, 101 SE 2d 295	3, 6, 37
State v Cooke et al., 248 NC 485, 103 SE 2d 846	1, 42-53
State v Cooke et al., 246 NC 518, 98 SE 2d 885	1, 55-60
State v Council, 129 NC 371 (511), 39 SE 814	2
State v Jones, 69 NC 14 (16)	2
State v Perry, 248 NC 334, 103 SE 2d 404	3, 6, 34
Staub v City of Baxley, 355 US 313, 2 L ed 2d 302, 309, 78 S Ct 277	3, 33
Sweezy v New Hampshire, 354 US 234, 1 L ed 2d 1311, 77 S Ct 1203	3, 41
Tomkins v Missouri, 323 US 485, 89 L ed 407, 65 S Ct 370	3, 33
Williams v Georgia, 349 US 375, 99 L ed 1161, 75 S Ct 814	3, 34

Rules of Court

Rules 13 and 15 of Revised Rules of Supreme Court of United States	1

Constitution of North Carolina

Article IV, Sec. 8	35

Constitution of United States

Article VI, Cl. 2	4, 5, 20, 30-32
Fourteenth Amendment	4, 5, 7, 8, 17, 19, 21, 22, 25, 27, 29, 30, 35, 37, 38

Federal Statutes

28 USC Sec. 1257 (2)	2, 41
28 USC Sec. 2103	41

General Statutes of North Carolina (1953)

Sec. 1-134	2, 4, 6, 8, 17, 27, 29, 30, 37

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1958

No._____

Phillip Cooke, Leon Wolfe, George Simkins, Jr., Joseph Sturdivent, Samuel Murray, and Elijah H. Herring,

Appellants

v

State of North Carolina

Appeal from the Supreme Court of the State of North Carolina

STATEMENT AS TO JURISDICTION

1. The above named appellants respectfully file this Statement as to Jurisdiction pursuant to Rule 13 and Rule 15 of the Revised Rules of the Supreme Court of the United States.

(a) OPINIONS IN THE COURT BELOW

The Opinion of the Supreme Court of North Carolina delivered upon rendering the judgment from which this appeal is taken is reported in State v Cooke et al., 248 NC 485, 103 SE 2d 846. Said Opinion is attached hereto as Appendix "A" and said Judgment is hereto attached as Appendix "B". The Opinion of the Supreme Court of North Carolina upon a former trial upon another set of warrants charging the identical trespass upon Gillespie Park Municipal Golf Course is reported in State v Cooke et al., 246 NC 518, 98 SE 2d 885. That Opinion is hereto attached as Appendix "C".

(b) GROUNDS ON WHICH JURISDICTION IS INVOKED

(i) This is a criminal prosecution commenced in the Municipal-County Court of Greensboro, Guilford County, North Carolina, alleging a trespass by the above named appellants upon the Municipal Gillespie Park Golf Course. The warrants charging simple trespass were issued under Section 14-134 of the General Statutes of North Carolina (1953).

(ii) The judgment of the Supreme Court of North Carolina appealed from in this case was entered and dated as of June 4, 1958, at the same time of the filing of the Opinion mentioned as Appendix "A" above. Said Judgment affirmed and found no error in the judgment of conviction and sentence by the Superior Court of Guilford County, North Carolina, entered on February 10, 1958, upon a trial de novo on appeal from a judgment of conviction and sentence in the Municipal-County Court of Greensboro. The sentence appealed from is 15 days in jail for each of the above named appellants.

No Petition for Rehearing in a criminal case is permitted in the Supreme Court of North Carolina. State v. Jones, 69 NC 14 (16), State v Council, 129 NC 371 (511), 39 SE 814.

The Notice of Appeal to the Supreme Court of the United States was filed in the Supreme Court of North Carolina on August 27, 1958, and a copy is hereto attached as Appendix "D".

(iii) The statutory provision believed to confer jurisdiction of this appeal on the Supreme Court of the United States is 28 USC 1257 (2).

(iv) It is believed by appellants that the following cases sustain the jurisdiction of this Court in this case:

Marsh v Alabama, 326 US 501, 509, 90 L ed 265, 270, 66 S Ct 276, 280.

Niemotko v Maryland, 340 US 268, 271, 95 L ed 267, 270, 71 S Ct 325, 327.

Railway Employees' Department etc. v Hanson, 351 US 225, 232, 100 L ed 1112, 1130, 76 S Ct 714.

Franklin National Bank v New York, 347 US 373, 98 L ed 767, 74 S Ct 550.

Public Utilities Commission of California v United States, 355 US 534, 2 L ed 2d 470, 478, 78 S Ct 446.

Smith v O'Grady, Warden, 312 US 329, 331, 85 L ed 859, 61 S Ct 572.

Lilly v Grand Trunk Western Ry Co., 317 US 481, 488, 87 L ed 411, 417, 63 S Ct 347.

Brown v Board of Education, 344 US 1, 97 L ed 3, 73 S Ct

Aaron v Cooper and Cooper v Aaron, ____US____ (Decided September 29, 1958)

Tomkins v Missouri, 323 US 485, 89 L ed 407, 65 S Ct 370.

Staub v. City of Baxley, 355 US 313, 2 L ed 2d 302, 309, 78 S Ct 277.

State v Perry, 248 NC 334, 103 SE 2d 404.

Williams v Georgia, 349 US 375, 99 L ed 1161, 75 S Ct 814.

Aycock v Richardson, 247 NC 234, 100 SE 2d 379.

Mason v Commissioners of Moore, 229 NC 626, 627, 51 SE 2d 6.

NAACP v Alabama, 357 US 449, 2 L ed 2d 1488, 1495, 78 S Ct 1163.

State v Clyburn, 247 NC 455, 458, 101 SE 2d 295.

Lambert v California, 355 US 225, 2 L ed 2d 228, 231, 78 S Ct 240.

Eubanks v Louisiana, 356 US 584, 2 L ed 2d 991, 994, 78 S Ct 970.

Hoag v New Jersey, 356 US 464, 2 L ed 2d 913, 917, 78 S Ct 829.

Brock v North Carolina, 344 US 424, 429, 97 L ed 456, 460, 73 S Ct 349.

Sweezy v New Hampshire, 354 US 234, 1 L ed 2d 1311, 77 S Ct 1203.

Pennsylvania v. Board of Directors etc., 353 US 230, 1 L ed 2d 792, 77 S Ct 806.

(v) The validity under the Constitution of the United States of Section 14-134 of the General Statutes of North Carolina (1953), as construed and applied by the State Courts in this case, is drawn in question upon this appeal, and said Section 14-134, which was read to the jury by the Trial Judge (Page 78 of printed Record below*), reads as follows:

> "If any person, after being forbidden to do so, shall go or enter upon the lands of another without a license therefor, he shall be guilty of a misdemeanor and on conviction shall be fined not exceeding fifty dollars or imprisoned not more than thirty days."

The acts of appellants held by the State Courts to be a crime under this statute were held by Declaratory Judgment of the United States District Court for the Middle District of North Carolina, affirmed by the Court of Appeals for the Fourth Circuit, to be the "constitutional rights" of the appellants.

(c) QUESTIONS PRESENTED BY THIS APPEAL

The following questions are presented by this Appeal:

1. Is Section 14-134 of the General Statutes of North Carolina (1953), as construed and applied by the State Courts in this case, unconstitutional under the Constitution of the United States, including the Supremacy Clause (Art. 6, Cl. 2), and also including the Fourteenth Amendment as interpreted by the United States District Court for the Middle District North Carolina in George Simkins et al. v City of Greensboro et al., 149 Fed. Supp. 562, and by the Court of Appeals for the Fourth Circuit affirming in City of Greensboro et al. v. George Simkins et al. 246 Fed. 2d 425?

2. Could the State agencies in this case, namely, City of Greensboro, Greensboro City Board of Education, and Gillespie Park Golf Club, Inc., consistent with the Equal Protection Clause of the Fourteenth

*See note on page 41.

Amendment of the Constitution of the United States, promulgate written regulations converting the public municipal Gillespie Park Golf Course, originally constructed with the Federal Government providing 65 per cent of the cost, into a private-club membership-only golf course, excluding all citizens who did not meet the membership rules? and do the membership rules as set out in the record thus limiting the use and enjoyment of this public municipal golf course, having been promulgated by State agencies, violate the Equal Protection Clause of the Fourteenth Amendment? and, said State agencies having adopted a written rule making eligible to play on said public municipal golf course "members in good standing of other golf clubs," could the State agencies operating the golf course, consistent with the Equal Protection Clause of the Fourteenth Amendment, arbitrarily in practice limit use and enjoyment of the golf course to those "members in good standing of other golf clubs" whose golf clubs were members of the Carolina Golf Association?

3. Was it the duty of the State Courts in this case to accept as true the allegations asserting appellants' Federal rights in their motion to quash the warrants and in their motion to set aside the verdict and for judgment notwithstanding the verdict, in view of the fact that the State did not answer to deny or controvert any of said allegations?

4. In its opinion in this case the Supreme Court of North Carolina having said, with reference to the Federal case cited in Question No. 1 above, that "Our knowledge of the facts in that case is limited to what appears in the published opinion," and having also said that "It would appear from the opinion that the entry involved in this case was one incident on which plaintiffs there relied to support their assertion of unlawful discrimination," was it the duty of the State Courts in this case, under the Supremacy Clause (Art. 6, Cl. 2) of the Constitution of the United States, to consider and give effect to all of the facts set forth in

said opinion of the Federal Court, and having taken judicial notice of said opinion, was it also the duty of the State Courts under the Supremacy Clause to take judicial notice of the Federal Court's Findings of Fact, Conclusions of Law, and Declaratory Judgment, in order to determine the extent to which the acts and conduct held by the State Courts to be a crime in this case were held by the Federal Courts to be protected by the Fourteenth Amendment to the Constitution of the United States?

5. The Supreme Court of North Carolina having held on May 7, 1958 in State v. Perry, 248 N. C. 334, that the unconstitutionality of a jury panel under the Constitution of the United States could be shown by evidence upon a motion to quash the indictment, was it a discrimination against the Federal rights asserted by appellants in this case for the State Courts to deny the request made by the appellants in their motion to quash the warrants and again in their motion to set aside the verdict, for an opportunity to present the record in the Federal case cited in Question No. 1 above upon the hearing of said motions?

6. Was it a discrimination against and an infringement upon the Federal rights asserted by appellants in this case for the State Courts to refuse to give effect to Finding of Fact No. 30 and Finding of Fact No. 33 in the Federal case cited in Question No. 1 above, both of which Findings of Fact were quoted verbatim in appellants motion to set aside the verdict, and the State not having answered to deny or controvert the allegations of said motion in any way?

7. The Supreme Court of North Carolina having held consistently prior to this case that said Section 14-134 of the General Statutes of North Carolina did not apply to public lands but only to "the possession or right of possession of real estate privately held," (State v. Clyburn, 247 N. C. 455), was it a discrimination against the Federal rights asserted by appellants

for the North Carolina Supreme Court to depart from this rule and hold that the statute did apply to the alleged trespass upon the public municipal golf course involved in this case?

8. The Supreme Court of North Carolina having approved in its opinion in this case the charge to the jury that "if a party entering upon the land has a legal right to do so, of course he may not be convicted of a trespass," and the Declaratory Judgment in the Federal case cited in Question No. 1 above having declared that the interference with and causing appellants to be arrested for playing on the golf course "was done solely because of the race and color of the" appellants "and constitutes a denial of their constitutional rights," (said Declaratory Judgment being quoted verbatim in appellants' motion to set aside the verdict, and the State having not answered to deny or controvert said motion), was it a violation of the duty of the State Courts under the Supremacy Clause and of the rights of appellants under the Fourteenth Amendment of the Constitution of the United States for the Supreme Court of North Carolina to hold in this case that the State Courts were not concluded by the Federal Court's determination of the "constitutional rights" of the appellants, and to submit to the State's jury the determination of this Federal "legal right" of appellants under the Constitution of the United States to play on this public municipal golf course?

9. The Supreme Court of North Carolina having gone outside the record before it to find in its opinion in this case the true fact concerning the Federal case cited in Question No. 1 above that "defendants had the record in that case identified," did the Equal Protection Clause of the Fourteenth Amendment require the Court to note the further true fact that the records in said Federal case were in fact identified as "Defendants' Exhibits 6 and 7," in order that the Court might see the further true fact that said Exhibits 6 and 7 were in fact offered in evidence and their admission

refused by the Trial Judge, as shown on Page 77 of the printed record before the Supreme Court of North Carolina?

10. Appellants having been tried twice upon two separate and different sets of warrants for the same alleged offense in the Municipal-County Court of Greensboro, Guilford County, North Carolina, and the first set of warrants and the conviction and sentence thereunder being still outstanding and undisposed of at the time of the issuance of the second set of warrants and the trial and conviction thereunder, does the second trial and conviction and sentence amount to the kind of double jeopardy which the 14th Amendment forbids as a denial of due process?

(d) STATEMENT OF THE CASE

Appellants have been tried twice upon two separate and successive sets of warrants in the Municipal-County Court of Greensboro, Guilford County, North Carolina, for the same identical acts of playing golf on the public Municipal Gillespie Park Golf Course. In between these two trials appellants were compelled to defend bills of indictment in the Superior Court of Guilford County, North Carolina, for the same identical acts of playing golf on said golf course. All of said warrants and indictments charged that said same identical acts of playing golf were a crime under Section 14-134 of the General Statutes of North Carolina (1953), which statute is quoted above in (v).

After said first trial upon said first set of warrants and while the case was pending on appeal in the Supreme Court of North Carolina, the United States District Court for the Middle District of North Carolina, in Civil Case No. 1058, George Simkins et al. v City of Greensboro et al., entered its Declaratory Judgment covering said same identical acts of playing golf on the public Municipal Gillespie Park Golf Course. Said Declaratory Judgment appears verbatim on Page 92 of the printed Record below and reads as follows:

"It is now ordered, adjudged and decreed that

defendants have unlawfully denied the plaintiffs as residents of the City of Greensboro, North Carolina, the privileges of using the Gillespie Park Golf Course, and that this was done solely because of the race and color of the plaintiffs, and constitutes a denial of their constitutional rights, and unless restrained will continue to deny plaintiffs and others similarly situated."

The Supreme Court of North Carolina arrested judgment on the judgment of conviction and sentence coming from the de novo trial in the Superior Court of Guilford County, North Carolina, under said first said of warrants, not upon any ground of appeal set up by appellants, but because the Court found that the Superior Court lost jurisdiction and its actions became a nullity when it permitted the warrants to be amended to change the name of the prosecuting witness from Gillespie Park Golf Course to Gillespie Park Golf Club, Inc. No further action was taken either by the Supreme Court or the Superior Court of Guilford County with reference to said first set of warrants, but the Supreme Court did say that the appellants could "now be tried under the original warrant since the court was without authority to allow the amendment." (246 NC 521).

After the United States District Court for the Middle District of North Carolina had entered its said Declaratory Judgment and after it had been affirmed by the Court of Appeals for the Fourth Circuit and had become final, at the October 21st, 1957, Term of the Superior Court of Guilford County, North Carolina, appellants were indicted and compelled to defend against indictments charging the identical trespass for the identical acts covered by said first set of warrants and also covered by said Declaratory Judgment of the said Federal Court. Said indictments appear on Pages 33 to 39 of the printed Record below. When said indictments were called for trial on December 2, 1957, the State took "a Nol Pros with leave" in all of said indictments. (Page 39 of printed Record below).

Appellants were then immediately arrested on December 2, 1957, on a new set of warrants in said Municipal-County

Court charging the identical trespass for the identical acts covered by said first set of warrants and also by said indictments and also by said Declaratory Judgment of said Federal Court.

Appellants were tried and convicted and sentenced in said Municipal-County Court upon said second set of warrants, and upon appeal were tried, convicted and sentenced to 15 days in jail in a de novo trial in Superior Court of Guilford County, North Carolina. The Supreme Court of North Carolina affirmed and found no error and this appeal is from the final judgment of the Supreme Court of North Carolina mentioned above as Appendix "B".

The effect of the proceedings in the Federal case of George Simkins et al. v City of Greensboro et al., 149 Fed Supp 562, affirmed in City of Greensboro et al. v George Simkins et al., 246 Fed 2d 425, is one of the crucial issues in this case. The Supreme Court of North Carolina in its Opinion in this case said that the United States District Court's Opinion in said Simkins case was before the State Courts and that "Our knowledge of the facts in that case is limited to what appears in the published opinion." (See Appendix "A", Page 50.)

Appellants, therefore, insert said Opinion of said United States District Court, as follows:

OPINION

Hayes, District Judge:

The City of Greensboro and the Greensboro City Board of Education concede that they cannot own and operate the Gillespie Park Golf Course for the public and exclude the plaintiffs and other Negro citizens of Greensboro from these privileges on account of their color.

Although the golf course has been available to the public for many years, whether by design or otherwise, Negroes have been denied the enjoyment of the privilege.

The City of Greensboro, before Brown v. Board of Education, 347 U.S. 483, in an effort to comply with Plessy v. Ferguson, 163 U.S. 537, erected in the City of Greensboro a nine-hole golf course for Negroes, known as Nocho Park Golf Course, but it cannot be deemed the equivalent of an 18-hole golf course like Gillespie Park course which was restricted to white people.

The Board of Education leased the land it did not need for school purposes at the time to the City of Greensboro. Through Works Progress Administration, which furnished 65% of the cost, the City of Greensboro built the last nine holes and agreed not to sell or lease for private use this public property during its life or usefulness.

Some of the Negro citizens applied to the City authorities for permission to play on the Gillespie Park course in 1949 and, because of opposition on the part of local citizens against Negroes playing on the course, after some negotiation, the City of Greensboro and City Board of Education entered into a lease contract whereby the entire golf course was leased to Gillespie Park Golf Club, a non-profit corporation which was organized solely for the purpose of taking the lease and maintaining and operating the course as a public golf course. G.S. 55-11

It is true the directors met with a quorum at first and fixed $60.00 for annual membership which permitted them to play without paying additional fees; also authorized $1.00 membership who would pay $1.25 greens fees on holidays and weekends, and 75 cents on other days.

The records of the corporation do not disclose sufficient data to show if rules were really established and enforced in respect to membership. The evidence does clearly show that white people were allowed to play by paying the greens fees without any questions and without being members. When Negroes asked to play,

they were told they would have to be members before they could play and it clearly appears that there was no intention of permitting a Negro to be a member or to allow him to play, solely because of his being a Negro.

The six plaintiffs presented themselves at the desk of the man in charge of the golf course and laid down 75 cents each and asked to play, the first named plaintiff being a dentist and practicing his profession in Greensboro. But they were not given permission to play. They insisted on their right to play and played three holes. While playing the third hole, the manager came and ordered them to leave, and they refused to go unless an officer arrested them. Whereupon the manager swore out a warrant charging each with trespass upon which they were tried, convicted and sentenced to 30 days in jail, the Statutory limit, from which an appeal is pending in the Supreme Court of North Carolina.

The Negroes have not only been denied the privilege of the golf course, but there is no intention on the part of the defendants to permit them to do so unless they are compelled by order of court.

This case presents two questions for determination. First are plaintiffs, being citizens and taxpayers of the City of Greensboro, entitled to the privilege of playing on the defendant's golf course as long as it is owned and used for the convenience of the citizens of Greensboro? Second. Can the defendants avoid giving equal treatment to the plaintiffs in the use of the facility by leasing it to a private corporation or can the lessee deny plaintiffs the right to play solely on account of color and thereby accomplish a result which is denied to the owner.

It is conceded that the defendants ordinarily are not required to furnish a golf course for its citizens. If, however, it undertakes to do it out of the public treasury, it cannot constitutionally furnish the facility to a

part of its citizens and deny it to others similarly situated.

The plaintiffs as citizens of the City of Greensboro are entitled to the equal protection of the law and cannot be deprived of their rights solely on account of color. The doctrine of Plessy v. Ferguson, supra, of equal but separate facility has been over-ruled in Brown v. Board of Education, supra.

Before Brown v. Board of Education, supra, the Supreme Court held that the election laws of the State could not be delegated to a political organization and empower it to deny Negroes the right to participate in the primary, and the action of such an agency was State action within the meaning of the Fourteenth Amendment and that the discrimination against the Negroes violated the Amendment. Nixon v. Condon, 286 U.S. 73. The members of the Supreme Court who declared that law were Chief Justice Hughes, and Associate Justices Brandeis, Stone, Roberts and Cardozo. It is appropriate to quote from Justice Cardozo's opinion:

"The test is whether they are to be classified as representatives of the State to such an extent and in such a sense that the great restraints of the Constitution set limits to their action.

"With the problem thus laid bare and its essentials exposed to view, the case is seen to be ruled by Nixon v. Herndon, supra. Delegates of the States's power have discharged their official functions in such a way as to discriminate invidiously between white citizens and black. Ex parte Virginia, supra; Buchanan v. Warley, 245 U.S. 60, 77. The Fourteenth Amendment, adopted as it was with special solicitude for the equal protection of members of the Negro race, lays a duty upon the court to level by its judgment these barriers of color."

To the same effect is Rice v. Elmore, 165 F. 2d 387 (4CCA).

The Fourth Circuit Court has ruled that public parks are controlled by the same principles of constitutional law as are controlling in public education. Dawson v. Baltimore, 220 Fed. 2d 386, affirmed 350 U.S. 877. Again that court held in Department of Conservation v. Tate, 231 Fed. 2d 615, that citizens of the State have right to use parks thereof without discrimination on ground of race; that these rights cannot be abridged by leasing parks with ownership being retained by the State. Derrington v. Plummer 5CCA-240 F. 2d, 922.

Judge Moore in Lawrence v. Hancock, 76 F. Supp. 1004, in a similar situation said:

"It is not conceivable that a city can provide the ways and means for a private individual or corporation to discriminate against its own citizens. Having set up the swimming pool by the authority of the legislature, the city, if the pool is operated, must operate it itself, or, if leased, must see that it is operated without any such discrimination."

The brief filed by the City of Greensboro contains this significant statement in its statement of facts:

"In December, 1955, six of ten plaintiffs in this action were denied the use of Gillespie Park Golf Course by employees of Gillespie Park Golf Club, Inc. That same month the City Council instructed the City Manager to proceed forthwith to receive bids for the sale of Gillespie Park Course and upon such sale to close the Nocho Park course. The land upon which the latter is situated is to be used for governmental purposes and is not to be sold."

The facts show that the City is still "in the saddle" so far as real control of the park is concerned and that the so-called lease can be disregarded, if and when, the City decides to do it. It also lends powerful weight to the inference that the lease was resorted to in the first instance to evade the City's duty not to discriminate against any of its citizens in the enjoyment in the

use of the park. The threatened sale is the procedure pursued in Clark v. Flory, 141 F. Supp. 248; affirmed in 237 Fed. 2d. 597.

The City of Greensboro contends that Holmes v. Atlanta, 350 U.S. 879; Hayes v. Crutcher, 137 F. Supp. 853; Augustus v. Pensacola, Fed. Supp. , N. D. Fla., and Holley v. Portsmouth, Fed. Supp. , (E.D. Va.) are inapplicable because they dealt with anticipated leases while in the instant case the lease existed before this suit was brought. It further contends that the lease is valid under the North Carolina law and therefore the valid existing lease "freezes" the status quo and leaves the court without power to do anything. If this logic is sound constitutional rights are a delusion and a snare. Such hitherto sacred rights can not be abridged by a mere lease between the city and a third party and the courts are not made impotent to afford relief. To hold otherwise would open a Pandora's box by which governmental agencies could deprive citizens of their constitutional rights by the artifice of a lease. If the lessee desires to continue to operate the golf course, it must do so without discrimination against the citizens of Greensboro. This public right can not be abridged by the lessee so long as the course is available to some of the citizens as a public park, it can not be lawfully denied to others solely on account of race.

The private corporation challenges the right of plaintiffs here because it contends they have not exhausted their administrative remedies, relying on Carson v. Warlick, 238 F. 2d. 724, and other cases dealing with enrollment in educational institutions. These cases are not in point. This golf club permits white people to play without being members, or otherwise, except it requires the prepayment of green fees. The plaintiffs here paid their fees, were forced off the course by being arrested for trespass. Everybody knows this was done because the plaintiffs were Negroes and for no other reason. This court can not ignore it. More-

over, there existed no known and uniform procedure of an administrative nature to be exhausted by plaintiffs. Admittance to a park or golf course is unlike enrolling in an educational institution.

A decree will be entered declaring that these plaintiffs have been denied on account of their color, equal privileges to use the golf course owned by the City Board of Education and the City of Greensboro and operated by the Gillespie Park Golf Club, and permanently restraining the defendants from discriminating against plaintiffs and other members of their race on account of color, so long as the golf course is owned by these agencies and operated for the pleasure and health of the public, their agents, lessees, servants and employees.

The court invited counsel for the respective parties to confer and to suggest to the court the best practical way to make effective the decree, in the event the plaintiffs prevailed. The final decree will be deferred a short time to get the result of this conference.

Citizenship in the United States imposes uniform burdens, such as paying taxes and bearing arms for the preservation and operation of our government. In like manner whatever advantages or privileges one citizen in the United States may enjoy through his liberty becomes the constitutional right of each citizen and without regard to race, color or creed. These principles of law have been fully and elaborately established in the Fourth Circuit Court of Appeals and by the Supreme Court of the United States and must be adhered to in this case.

This the 18th day of March, 1957.

/s/ Johnson J. Hayes
United States District Judge

Raising of Federal Questions Below

Appellants first raised Federal questions sought to be reviewed by this appeal by a written motion to quash the war-

rants in Municipal-County Court. The State did not answer the allegations of the motion. The Supreme Court of North Carolina said in its Opinion in this case: "Defendants moved in the Municipal-County Court to quash the warrants. Their motions were overruled. They then entered pleas of not guilty." (Appendix "A" attached hereto, Page 42.)

Appellants renewed these written motions to quash in the Superior Court and the State did not answer the allegations of the motion. The Supreme Court of North Carolina said in its Opinion in this case: "Before pleading to the merits in the Superior Court, defendants renewed their motions to quash as originally made in the Municipal-County Court. The motions made in apt time were overruled by the court." (Appendix "A" attached hereto, Page 43.)

The written motion to quash is at Pages 28 to 32 of the printed Record below. The following is quoted from Pages 28 to 30:

Motion to Quash

Now come the defendants, and each of them all being Negro citizens of Greensboro, North Carolina, through counsel, and make the following Motion:

That the warrants in the above-titled cause charging these defendants, and each of them with simple trespass based on GS 14-134 be quashed for the reason that GS 14-134 is hereby being unconstitutionally applied to these defendants, on the following grounds:

1. The State of North Carolina in this prosecution is, contrary to the Supremacy Clause of the United States Constitution, attempting to make a crime out of specific acts and conduct which both the United States District Court for the Middle District of North Carolina and the United States Court of Appeals for the Fourth Circuit have specifically held to be protected by the Fourteenth Amendment to the Constitution of the United States. In support of this assertion the defendants show to the Court the following:

(a) Based upon the specific facts and conduct alleged by the State to be a crime in this case, these defendants brought Civil Action No. 1058 in the United States District Court for the Middle District of North Carolina, praying for a declaratory judgment and a decree enjoining the prosecution witnesses and the City of Greensboro and the Greensboro City Board of of Education from interfering with the defendants and all other Negroes similarly situated from playing golf on the Gillespie Park Golf Course.

(b) A full hearing was held before United States District Judge Johnson J. Hayes, who on April 24, 1957, found specifically that the prosecuting witnesses and the City of Greensboro had refused to permit these defendants to play golf "primarily because of their color" (Finding of Fact No. 33), and concluded as a matter of law that these defendants "and other Negroes similarly situated cannot be denied on account of race, the equal privileges to the park, notwithstanding the lease." In addition to his Findings of Fact and Conclusion of Law, Judge Hayes filed an opinion in the case and entered a "decree and injunction" enjoining the prosecuting witnesses and the City of Greensboro and the Greensboro City Board of Education from interfering with these defendants in playing golf on the Gillespie Park Golf Course. The prosecuting witnesses and the City of Greensboro appealed and this decree was subsequently affirmed by the United States Court of Appeals for the Fourth Circuit.

(c) These defendants have subpoenaed the Clerk of the United States District Court for the Middle District of North Carolina to bring to this trial the full record and judgment roll in said case and respectfully request an opportunity to offer this evidence upon the hearing of this motion.

(d) Defendants respectfully urge the Court to receive and consider the record and judgment roll in the Federal case and after such consideration to estop the State and the prosecuting witnesses from proceeding.

further with this prosecution. To permit this prosecution to proceed would be in effect to nullify and render ineffectual the judgment and decree of the United States Courts contrary to the Supremacy Clause of the United States Constitution and such prosecution would violate the rights of these defendants and laws of the United States, including the Fourteenth Amendment.

The Supreme Court of North Carolina in its Opinion in this case held that the proceedings in the Federal Court case of Simkins v Greensboro, supra, with the exception of the Opinion, could not be shown on the motion to quash for the reason that the record of such proceedings, except the Opinion, was "evidence aliunde the record." But, with reference to the allegations in the written motion to quash, the Supreme Court of North Carolina did say: "Since none of the reasons nor all combined sufficed to sustain the motion to quash, the court correctly overruled the motion and put the defendants on trial for the offense with which they were charged." (Appendix "A", hereto attached, Page 45.)

Trial Court Refused to Admit Federal Records

On Page 14 of appellants' brief before the Supreme Court of North Carolina in this case is the following assignment of error: "The Court erred in refusing to admit defendants' Exhibits 6 and 7, as set out in Exception No. 22. These exhibits were the decrees, the findings of fact, conclusions of law and opinion of the Federal District Court in the Simkins case and the opinion of the Court of Appeals, Fourth Circuit, in the same case." (See Transcript of Record, Page 121.) The offer of these Exhibits 6 and 7 and the refusal of the Trial Court to admit them and the Exception No. 22 all appear on Page 77 of the printed Record below.

The Record is silent as to the identification of these Federal Court records as Exhibits 6 and 7, but the Supreme Court of North Carolina says in its Opinion in this case the following with reference to said Federal Court records: "Although the defendants had the record in that case identified, they did not offer it in evidence." (Appendix "A" hereto attached,

Page 50). The only document other than appellants' brief mentioned above, which shows the identification of the Federal Court records, so far as appellants know, is the Official Court Reporter's Transcript of the Testimony, which shows on Page 59 that "the documents referred to were marked for identification Defendants' Exhibits 6 and 7". The Supreme Court of North Carolina having gone outside the printed record to find the true fact that the Federal Court records were identified, appellants believe that it is proper for them to include this material in the statement of the case, showing how the Federal records were identified, in order to show the further true fact, which does appear in the record that the Trial Court refused to admit said Exhibits 6 and 7 into evidence.

Motion to Set Aside the Verdict

Appellants filed in the case in the Superior Court a written motion to set aside the verdict and for judgment notwithstanding the verdict. The State did not answer the allegations of this motion. The allegations of the motion to quash were repeated by reference and in addition the following allegations were included in the motion to set aside the verdict (said motion appearing on Pages 91 to 97 of the printed Record below):

> II. That the Supremacy Clause (Article VI) of the Constitution of the United States requires this Court to give effect to and to enforce the judgments of the United States Courts covering the subject matter of this prosecution, particularly the "Decree and Injunction" of the United States District Court for the Middle District of North Carolina, in Civil Case No. 1058, in which these defendants were plaintiffs and Gillespie Park Golf Club, Inc., was one of the defendants, covering the identical acts and conduct charged by the State to be a crime of trespass in this case, said "Decree and Injunction" reading in part as follows:
>
> "It is now ordered, adjudged and decreed that defendants have unlawfully denied the plaintiffs as residents of the City of Greensboro, North Carolina, the privileges of using the Gillespie Park Golf Course, and

that this was done solely because of the race and color of the plaintiffs, and constitutes a denial of their constitutional rights, and unless restrained will continue to deny plaintiffs and others similarly situated."

That the State of North Carolina and its Jury in this case undertake to find to be criminal the identical acts and conduct which said "Decree and Injunction" holds to be protected by the Constitution of the United States, and further undertake to find to have been lawfully done, that which said "Decree and Injunction" holds was "unlawfully done," and that to permit said verdict to stand and to punish these defendants on the basis of said verdict would nullify and render ineffectual the rights of these defendants which said "decree and injunction" holds to be guaranteed and protected by the Constitution and laws of the United States, including the due process and equal proctection clauses of the 14th Amendment.

III. That a written opinion was handed down in the said case in the United States District Court for the Middle District of North Carolina by United States District Judge Johnson J. Hayes, which opinion is reported in 149 Fed. Supp. 562, and in which Judge Hayes said of the identical acts and conduct which the verdict finds to be criminal in this case, the following:

"This golf club permits white people to play without being members, or otherwise, except it requires the payment of greens fees. The plaintiffs here paid their fees, were forced off the course by being arrested for trespass. Everybody knows this was done because the plaintiffs were Negroes and for no other reason. This Court cannot ignore it."

Defendants respectfully request this Court to take judicial notice of this matter of common knowledge pertaining to this public golf course owned and operated by their agency by the City of Greensboro and the Greensboro City Board of Education. That this matter of common knowledge about the Gillespie Park Golf

Course was spoken truly and not idly by Judge Hayes when he wrote that "everybody knows" it was shown by Jurors in this case in their answers to questions touching their qualifications. Those who had played on Gillespie Park Golf Course stated very frankly and freely in open court that they had played on this course without any requirements except the payment of greens fees. Defendants respectfully suggest that, if any confirmation of Judge Hayes' statement that this was common knowledge which "everybody knows" is necessary it is found in these statements of the Jurors in this case.

Defendants respectfully suggest to the Court that to permit this verdict to stand under these circumstances would violate the rights of these defendants under the Constitution and laws of the United States, including the due process and equal protection clauses of the 14th Amendment.

IV. That said "Decree and Injunction" of the United States District Court for the Middle District of North Carolina begins as follows:

"This cause coming on for hearing and the Court having heard the evidence and argument of counsel and carefully considered the same and the briefs filed, and having made the findings of fact and conclusions of law which appear of record."

Defendants respectfully suggest to the Court that this reference in said "Decree and Injunction" to the findings of fact and conclusions of law which appear of record makes them a part of the "Decree and Injunction" just as if written out therein in full; and for this reason and also because said findings of fact and conclusions of law are a part of the record and judgment roll in said case in the United States District Court for the Middle District of North Carolina covering the identical acts and conduct which said verdict seeks to make a crime, the Supremacy Clause of the Constitution of the United States lays a duty upon this Court to respect and give effect to said findings of

fact and conclusions of law, and especially to Finding of Fact 33, which reads as follows:

"White citizens of Greensboro are given the privilege of becoming permanent members by p a y i n g $60.00 per year without greens fees and others not permanent members by paying $1.00 per year and greens fees of $.75, except on holidays and weekends, when it is more. On days other than holidays and weekends when greens fees are $1.25 white citizens are permitted to play without being members by paying the fees above set forth and without paying the extra $1.00 and without any questions being put to them. When the plaintiffs applied to be given the same privilege they were refused on the ground that they were not members but primarily because of their color. Plaintiffs laid the greens fees on the table in the club house, went out to play and after they had gotten to the 3rd hole the 'pro' in charge of the golf course ordered them off and they insisted they had a right to play and would not get off unless they were arrested by an officer, whereupon the 'pro' had them arrested and they were tried and convicted and sentenced to imprisonment for a period of 30 days, which is the maximum under the law for the State of North Carolina for trespassing."

Defendants further respectfully show to the Court that on these facts Judge Hayes said in his opinion the following:

"Citizenship in the United States imposes uniform burdens, such as paying taxes and bearing arms for the preservation and operation of our government. In like manner, whatever advantages or privileges one citizen in the United States may enjoy through his liberty becomes the constitutional right of each citizen and without regard to race, color or creed. These principles of law have been fully and elaborately established in the Fourth Circuit Court of Appeals and by the Supreme Court of the United States and must be adhered to in this case."

Defendants respectfully suggest to the Court that the verdict in this case not only does not adhere to these principles, but if permitted to stand would seek to thwart and nullify these principles, and that said verdict should be set aside to permit said principles to be adhered to and vindicated.

V. That the evidence in this case and the instructions of the Court to the Jury show that the land on which Gillespie Park Golf Course is situated is public and not private property, whereas G S 14-134, which is the North Carolina statute under which the warrants were drawn in this case, is meant to cover private property and not public property. Said statute reads:

"If any person after being forbidden to do so shall go or enter upon the lands of another without a license therefor, he shall be guilty of a misdemeanor, . . . "

Defendants respectfully suggest to the Court that this statute was never intended to apply to public lands or public property, but was and is intended to apply solely and only to private property, and that the lands and property and the possession alleged to have been invaded in this case was public lands and property and the possession of an agency of the City of Greensboro and the Greensboro City Board of Education, which held the title to said lands and property. In this connection defendants respectfully call the Court's attention to Finding of Fact No. 30 in said case in the United States District Court for the Middle District of North Carolina.

"That the leases in this case undertook to turn over to a corporation having no assets or income highly valuable income-producing property belonging to the City and the school board, the chief officer and promoter of said corporation being an official of the city, and the city having no prospect of getting anything from said leases except out of the income which the leased property was already bringing in, and with the

City reserving the right to put into the property further investments from other sources than said income and that under these circumstances said corporation was in fact an agency of the City and the school board for the continued maintenance and operation of the golf course for the convenience of the citizens of Greensboro."

The Superior Court denied the motion to set aside the verdict without requiring the State to answer its allegations. Appellants excepted and assigned the denial of the motion as error on appeal. (Page 97 of printed Record below.) The Supreme Court of North Carolina discusses this motion at length in its Opinion in this case and concludes: "Defendants were not, as a matter of right, entitled to have the verdict set aside." (Appendix "A" herto attached, starting at Page 50.) In its discussion of the motion to set aside the verdict the Supreme Court of North Carolina said with reference to the acts of playing golf in this case as having been before the Federal Courts: "It would appear from the opinion that **the entry involved in this case** was one incident on which plaintiffs there relied to support their assertion of unlawful discrimination, but it is manifest from the opinion that that was not all of the evidence which Judge Hayes had." (Emphasis added.)

Equal Protection Question Besides Racial Exclusion

In their motion to set aside the verdict appellants said (Page 93 of printed Record below): "Defendants respectfully suggest to the Court that to permit this verdict to stand under these circumstances would violate the rights of these defendants under the Constitution and laws of the United States, including the due process and equal protection clauses of the 14th Amendment."

Clyde Bass, assistant pro at the golf course when appellants sought to play, testified as to what he told appellants (Page 40 of printed Record below): "I told them it was a private club for members and invited guests only." He also testified (Page 41 of printed Record below): "To my knowledge, no Negroes have ever played at Gillespie Park Golf Course

before this date. Some Negroes have presented themselves before this date to play, but none have played to my knowledge."

Appellants alleged in their motion to set aside the verdict, and the State did not answer to deny the allegations, that the Jurors in this case, "in their answers to questions touching their qualifications," in the cases of those who had played on Gillespie Park Golf Course, "stated very frankly and freely in open court that they had played on this course without any requirements except the payment of greens fees."

The by-laws of the golf corporation said the following of membership in the corporation (Page 70 of printed Record below): "Membership in this corporation is restricted to members who are approved by the Board of Directors for membership in this Club."

Said by-laws said the following as to who was eligible to play on this golf course (Page 70 of printed Record below): "The golf course and its facilities shall be used only by members, their invited guests, members in good standing of other golf clubs, members of the Carolina Golf Association, pupils of the Professional and his invited guests."

John R. Hughes, president of the golf corporation, testified (Pages 74, 75 of the printed Record below): "We operated completely on our own. The City had nothing to do with it." "Those persons allowed to play were members of Gillespie Park Golf Club, Inc., and their invited guests and members in good standing with other clubs that were members of the Carolina Golf Asspciation."

One or more of appellants were members of a golf club which was not a member of the Carolina Golf Association. (Page 50 of printed Record below).

The Superior Court denied the motion to set aside the verdict and appellants took exception. (Page 97 of printed Record below). The Supreme Court of North Carolina affirmed and found no error. (Appendix "A" attached hereto, Page 53.)

Judicial Notice of 14th Amendment as Construed by Federal Decisions

Appellants contended in their motions to quash and to set aside the verdict and by proper assignments on appeal that it was the duty of the State Courts under the Supremacy Clause (Art. 6, Cl. 2) of the Constitution of the United States to notice and to enforce the Federal Court decisions declaring the rights of appellants with respect to the identical acts charged to be a criminal trespass in this case. (Pages 28, 91 of printed Record below). Appellants also alleged verbatim in the motion to set aside the verdict the Declaratory Judgment of the United States District Court covering said identical acts. (Page 92 of printed Record below).

The Supreme Court of North Carolina held that the State Courts would take judicial notice of the Federal Court's published Opinion, but that "Since the court was not required to take judicial notice of the judgment" in the Federal Court, "we are not called upon to determine the effect which should have been given if offered in evidence." (Appendix "A" attached hereto, Page 52.)

Raising Question of Double Jeopardy

In their motions to quash and to set aside the verdict appellants alleged that they had been subjected to double jeopardy in violation of the 14th Amendment to the Constitution of the United States. The motions were overruled and the Supreme Court of North Carolina said in its Opinion: "It is manifest that there is here no double jeopardy." (Appendix "A" attached hereto, Page 44.)

The successive criminal proceedings covering the identical acts charged to violate Section 14-134 of the General Statutes of North Carolina (1953) are set forth above under this Statement of the Case on Pages 8-10.

In the belief that this Court will take judicial notice of the proceedings in the Federal Court to aid in determining whether or not this Court has jurisdiction in this case, appellants have attached hereto as Appendix "E", Appendix "F", and Appendix "G", the Findings of Fact, the Conclu-

sions of Law; and the Decree and Injunction of the United States District Court for the Middle District of North Carolina.

(e) SUBSTANTIALTY OF THE FEDERAL QUESTIONS

This is the first time since the desegregation decisions of this Court that any state, so far as known to appellants, has undertaken to make a crime out of the exercise of "constitutional rights" which have been duly declared to exist by the Federal Courts. Months before the warrants were drawn in this case, charging to be a criminal trespass the acts of appellants in playing golf on the Municipal Gillespie Park Golf Course, the United States District Court for the Middle District of North Carolina had issued its Declaratory Judgment declaring that those identical acts of playing golf constituted the "constitutional rights" of appellants and further declaring that interference with those "constitutional rights" by the prosecuting witnesses in this case was "unlawfully" done; and also before said warrants were drawn said Declaratory Judgment had been duly affirmed by the Court of Appeals for the Fourth Circuit and had become final. The State agencies, namely, City of Greensboro, Greensboro City Board of Education, and Gillespie Park Golf Club, Inc., were the defendants against whom said Declaratory Judgment was issued, the Federal District Court having found in Finding of Fact No. 30, quoted verbatim by appellants in their motion to set aside the verdict and not denied by the State, that the said golf "corporation was in fact an agency of the City and the school board for the continued maintenance and operation of the golf course for the convenience of the citizens of Greensboro." (See Page 25 above.)

The State in this case seeks to reverse what the Federal Court has declared under the Constitution of the United States to be the "constitutional rights" of appellants, and to make unlawful under state law what the Federal Courts have held to be lawful under the Federal Constitution.

Cases on All-Fours on Question of Jurisdiction

On the question of jurisdiction, appellants believe that Marsh v Alabama, supra, is as near a case like the instant case as it is ordinarily possible for two cases to be.

In Marsh the defendants were arrested, tried and convicted for an alleged trespass under Sec. 426, Title 14, Alabama Code 1940, which statute is entitled "Trespass after warning," and which is in substance practically identical with Sec. 14-134 of the General Statutes of North Carolina (1953) as construed in the instant case.

The land involved in Marsh was a company-owned town, and the alleged trespass was remaining on a street in that town and distributing literature after being ordered to leave. Defendant having claimed rights under the First and Fourteenth Amendments of the Constitution of the United States, this Court entertained an appeal from the Supreme Court of Alabama, which sustained the conviction and sentence of defendant.

In this case the golf course involved was owned by the City of Greensboro and the Greensboro City Board of Education, but was operated by Gillespie Park Golf Club, Inc., a North Carolina corporation which the Federal Courts determined to be "an agency of the City and the school board." (See Page 25 above.) Appellants were arrested, tried and convicted under said North Carolina trespass statute for playing golf on this golf course, where they claimed they had a Federal constitutional right to be, this right having been established by Declaratory Judgment of the Federal Courts at the time the warrants in this case were drawn. (See Pages 10-12 and 20 above.)

The Supreme Court of North Carolina having sustained the judgment of conviction and sentence of appellants, it would seem that the jurisdiction of this Court on appeal would be clearly established by Marsh v Alabama. In that case, Mr. Justice Black said this for the Court:

> "In our view the circumstance that the property rights to the premises where the deprivation of liberty, here involved, took place, were held by others than the public, is not sufficient to justify the State's permitting a corporation to govern a community of citizens so as to restrict their fundamental liberties and the

enforcement of such restraint by the application of a state statute." (326 US at Page 509)

Mr. Justice Frankfurter concurring said:

"And similarly the technical distinctions on which a finding of 'trespass' so often depends are too tenuous to control decision regarding the scope of vital liberties guaranteed by the Constitution." (326 US at Page 511)

In the same vein of the principles of Marsh v Alabama, so far as the question of jurisdiction is concerned, is the case of Niemotko v Maryland, supra, which involved use of a state park without a permit, and the arrest, trial, conviction and sentence of defendants for such use under a Maryland disorderly conduct statute. From a final judgment sustaining the conviction and sentence, this Court entertained an appeal from the highest Maryland court.

Effect of Supremacy Clause on Section 14-134

In Railway Employees' Department etc. v Hanson, supra, this Court said: "A union agreement made pursuant to the Railway Labor Act has, therefore, the imprimatur of the federal law upon it and by force of the Supremacy Clause of Article VI of the Constitution, could not be made illegal nor vitiated by any provisions of the laws of a state."

Likewise, appellants contend that, at the time the warrants issued upon which appellants were arrested and tried and sentenced in this case, the identical acts of playing golf on the Municipal Gillespie Park Golf Course, which the State charges to be a crime, bore "the imprimatur" of the 14th Amendment as interpreted by the Federal Courts, and therefore "could not be made illegal" by Section 14-134 of the General Statutes of North Carolina, and that said statute must give way as unconstitutional, as it thus collides with the Federal Constitution.

Other cases sustaining the jurisdiction of this Court, where state law collides with Federal law, are: Franklin National Bank v New York and Public Utilities Commission of California v United States, both supra.

Judicial Notice.—Appellants take the view that Federal Court proceedings and judgments construing the Constitution and laws of the United States are not just ordinary judgments, but that they become an integral part of the Federal Constitution and laws which they construe. Appellants believe that when the Supremacy Clause says that "the Judges in every State shall be bound" by the Constitution and laws of the United States, it means to include the interpretation placed upon them by the Federal Courts.

In Smith v O'Grady, Warden, supra, this Court said of the Federal Constitution: "That Constitution is the supreme law of the land, and 'upon the state courts, equally with the courts of the Union, rests the obligation to guard and enforce every right secured by that Constitution.'" The State Court in this case could not know its duty without looking at all parts of the Federal decisions which appellants called to their attention as establishing "constitutional rights" in appellants to perform the acts of golf playing which the State charges to be a crime in this case.

In Lilly v Grand Trunk Western Ry Co, supra, the Supreme Court of Illinois declined to take judicial notice of a rule of the Interstate Commerce Commission under an Act of Congress. This Court reversed, saying: "Adopted in the exercise of the Commission's authority, Rule 153 acquires the force of law and becomes an integral part of the Act . . . , to be judicially noticed."

Likewise, in this case appellants believe that the decisions of the Federal Courts declaring to be the "constitutional rights" of appellants the identical acts of playing golf which the State charges to be a crime, became an integral part of the 14th Amendment in this case, "to be judicially noticed."

In Brown v Board of Education, supra, this Court said:

"This Court takes judicial notice of a fourth case, which is pending in the United States Court of Appeals for the District of Columbia Circuit, Bolling et al. v. Sharpe et al., No. 11,018 on that court's docket. In that case, the appellants challenge the appellees' refusal to admit certain Negro appellants to a segregated white school in the District of Colum-

bia; they allege that appellees have taken such action pursuant to certain Acts of Congress; they allege that such action is a violation of the Fifth Amendment of the Constitution."

Appellants believe that the principles upon which this Court took judicial notice even of allegations in the pleadings in said Brown case would, when supplemented by the Supremancy Clause of the Constitution of the United States, require the State Courts in this case not only to take judicial notice of but also to give effect to the proceedings and decisions of the Federal Courts, determining Federal "constitutional rights" and involving the identical acts of playing golf on the public Municipal Gillespie Park Golf Course which are involved in this criminal trespass prosecution; and that all of these matters raise most substantial Federal questions which give this Court jurisdiction to entertain this appeal, and which only this Court can finally resolve.

Little Rock Case (Aaron v Cooper, ____US____, Decided September 29, 1958). In this latest decision of this Court touching the reach of the judgments and decisions of the Federal Courts when intepreting or establishing "constitutional rights" under the Constitution of the United States, it was stated by Mr. Chief Justice Warren for a unanimous Court:

"Article VI of the Constitution makes the Constitution the 'supreme law of the land.' In 1803, Chief Justice Marshall, speaking for a unanimous court, referring to the Constitution as 'the fundamental and paramount law of the nation,' declared in the notable case of Marbury v. Madison, 1 Cranch 137, 177, that 'it is emphatically the province and duty of the judicial department to say what the law is.' This decision declared the basic principle that the Federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected by this court and the country as a permanent and indispensable feature of our constitutional system."

"Chief Justice Marshall spoke for a unanimous court in saying that: 'If the Legislatures of the several states may, at will, annul **the judgments of the courts of the United States, and destroy the rights acquired under those judgments,** the Constitution itself becomes a solemn mockery . . .' United States v. Peters, 5 Cranch 115, 136." (Emphasis Added.)

Pleadings Which Assert Federal Rights

Appellants state above verbatim (Pages 17-19, 20-25) allegations in their motions to quash and to set aside the verdict, asserting the Federal rights which they claim have been denied or infringed in this case. Since the State did not in any way deny these allegations, they must be accepted as true. Tomkins v Missouri, supra.

As to the jurisdiction and province of this Court on appeal from a state court where Federal constitutional rights have been set forth in a pleading, this Court said in Staub v City of Baxley, supra:

> "At the threshold, appellee urges that this appeal be dismissed because, it argues, the decision of the Court of Appeals was based upon state procedural grounds and thus rests upon an adequate nonfederal basis, and that we are therefore without jurisdiction to entertain it. Hence, the question is whether that basis was an adequate one in the circumstances of this case. 'Whether a pleading sets up a sufficient right of action or defense, grounded on the Constitution or a law of the United States, is necessarily a question of federal law; and where a case coming from a state court presents that question, this Court must determine for itself the sufficiency of the allegations displaying the right or defense, and is not concluded by the view taken of them by the state court.' First Nat. Bank v Anderson 269 US 341, 346, 70 L ed 295, 302, 46 S Ct 135, and cases cited. See also Schuylkill Trust Co. v Pennsylvania, 296 US 113, 122, 123, 80 L ed 91, 98, 56 S Ct 31, and Lovell v Griffin, 303 US 444, 450, 82 L ed 949, 952, 58 S Ct 666. As Mr. Justice Holmes said in Davis v Wechsler, 263 US 22, 24, 68 L ed 143, 145, 44 S Ct 13, 'Whatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice.' Whether the constitutional rights asserted by the appellant were '. . . given due recognition by the [Court of Appeals] is a question as

to which the [appellant is] entitled to invoke our judgment, and this [she has] done in the appropriate way. It therefore is within our province to inquire not only whether the right was denied in express terms, but also whether it was denied in substance and effect, as by putting forward non-federal grounds of decision that were without any fair or substantial support . . . [for] if non-federal grounds, plainly untenable, may be thus put forward successfully, our power to review easily may be avoided.' Ward v Love County, 253 US 17, 22, 64 L ed 751, 758, 40 S Ct 419, and cases cited."

Jurisdiction as Affected by Discrimination Against Federal Rights

The Supreme Court of North Carolina held in its opinion in this case that the Federal Court proceedings establishing the "constitutional rights" of appellants could not be shown on a motion to quash. (Appendix "A" attached hereto, Page 45). But on May 7, 1958, in State v Perry, supra, the Supreme Court of North Carolina held that the Federal right not to be indicted by an unconstitutional grand jury could be shown on a motion to quash.

The reason for not forcing a defendant to stand trial until his claim that there is a fundamental impediment in the proceedings has been decided seems to be equally present in this case as in State v Perry.

Inadvertent Passing by of Federal Rights

Appellants have set out above at Pages 19-20, what they consider to be a fair statement concerning the record with regard to the assertion in the opinion of the Supreme Court of North Carolina: "Although the defendants had the record in that case identified, they did not offer it in evidence," meaning the record from the Federal Courts.

Appellants make no claim that this arose through other than inadvertence on the part of all concerned, including appellants. Since no petition for rehearing is permitted in a criminal case in the Supreme Court of North Carolina, appellants could not call this inadvertence to the attention of that

Court. But the effect upon the asserted Federal rights is the same as though this incorrect statement of fact about not offering the Federal Court records in evidence had been other than inadvertent.

Besides, under its decisions the Supreme Court of North Carolina has wide discretion to make inquiry of the Clerks of the lower State Courts to determine what actually transpired, where there are discrepancies in considering the record on appeal from such lower Courts. See Mason v Commissioners of Moore and Aycock v Richardson, both supra, and also Art. IV, Sec. 8 of the Constitution of North Carolina.

What is more, this wide discretion has actually been exercised by the Supreme Court of North Carolina, in reconciling discrepancies or ambiguities in the record in this case. See State's Motion to Dismiss at Page 173 of Transcript of the Record, and Opinion of the Court, Appendix "A", attached hereto, Page 42.

Appellants therefore contend that this brings the case on this point affecting the jurisdiction of this Court within the principle of NAACP v Alabama, supra, where this Court said: "Respondent recognizes that our jurisdiction is not defeated if the nonfederal ground relied on by the state court is 'without any fair or substantial support,' Ward v Love County, 253 US 17, 22, 64 L ed 751, 758, 40 S Ct 419."

Due Process and Equal Protection Question Aside from that of Racial Exclusion

At Pages 25-26 above appellants give a summary of the evidence as to how this Municipal Gillespie Park Golf Course was operated in permitting or excluding citizens from play. It shows clearly that these State agencies undertook to operate this public golf course, built originally with the Federal Government providing 65 per cent of the cost, as a private, membership only facility, and that the use was restricted to those citizens who met the approval of the Board of Directors and managers, without any known standards which all citizens could meet.

Appellants contend that this was a denial of equal protection and due process, without regard to racial exclusion. A

case on this principle is that of Niemotko v Maryland, supra, where citizens were tried and convicted for using a public park without a permit from those in charge. There this Court said:

> "In cases in which there is a claim of denial of rights under the Federal Constitution, this Court is not bound by the conclusions of lower courts, but will reexamine the evidentiary basis on which those conclusions are founded."

Examining the evidence in Niemotko, this Court said:

> "In the instant case we are met with no ordinance or statute regulating or prohibiting the use of the park; all that is here, is an amorphous 'practice', whereby all authority to grant permits for the use of the park is in the Park Commissioner and the City Council. No standards appear anywhere; no narrowly drawn limitations; no circumscribing of this absolute power; no substantial interest of the community to be served."

And finally on Page 273 of 340 US:

> "It thus becomes apparent that the lack of standards in the license-issuing 'practice' renders that 'practice' a prior restraint in contravention of the Fourteenth Amendment and that the completely arbitrary and discriminatory refusal to grant the permits was a denial of equal protection. Inasmuch as the basis of the convictions was the lack of the permits, and that lack was, in turn, due to the unconstitutional defects discussed, the convictions must fall."

The president of the golf club testified: "The City had no voice in the operation of the golf course after the corporation took it up." "We operated completely on our own." (Page 26 above). The written by-laws of the golf corporation permitted members of "other golf clubs" to play, but this in practice was arbitrarily limited to clubs which were also members of the Carolina Golf Association, and appellants who were members of the City-owned 9-hole Nocho Park Golf Club were excluded from playing because their Club did not belong to Carolina Golf Association.

Changing Meaning of Statute Without Notice

Prior to the instant case, it had always been the interpretation of the Supreme Court of North Carolina that Section 14-134 of the General Statutes of North Carolina (the criminal trespass statute) applied only to private and not to public property. In State v Clyburn, supra, the Supreme Court of North Carolina said: "Our statutes, GS 14-126 and -134, impose criminal penalties for interfering with the possession or right of possession of real estate **privately** held." (Emphasis added.)

The instant case is the first case, so far as appellants have been able to discover, where the Supreme Court of North Carolina has ever held that said Section 14-134 imposes criminal penalties upon a citizen for going upon lands publicly owned and publicly held.

The decision of the Supreme Court of North Carolina in this case, therefore, raises serious questions of Due Process and Equal Protection under the Fourteenth Amendment, which are closely akin in principle to the question decided by this Court in Lambert v California, supra: "Engrained in our concept of Due Process is the requirement of notice."

It would seem that citizens would be entitled to some notice that the Supreme Court of North Carolina was going to change its well-settled rule that this criminal trespass statute applied only to "real estate privately held," before citizens using public lands could be expected to understand that, in exercising their "constitutional rights" to go upon such public lands, they would be running the risk of prosecution under this criminal trespass statute which had never before this instant case been applied to public lands.

Evidence Shows Racial Discrimination

The fact that no Negro has ever been permitted to play on this Municipal Gillespie Park Golf Course (See Pages 25-26 above), since the United States Government provided 65 per cent of the original cost in 1940, brings this case, in the opinion of appellants, within the principle of Eubanks v Louisiana, supra, where this Court said: "We are reluc-

tantly forced to conclude that the uniform and long-continued exclusion of Negroes from grand juries shown by this record cannot be attributed to chance, to accident, or to the fact that no sufficiently qualified Negroes have ever been included in the lists submitted to the various local judges."

Clyde Bass, "an agency of the City and the school board," (See Page 25 above), testified (See Pages 25-26 above): "To my knowledge no Negroes have ever played at the Gillespie Park Golf Course before this date. Some Negroes have presented themselves before this date to play, but none have played to my knowledge."

This Court in Eubanks found jurisdiction to reexamine the evidence to determine whether or not there had been racial exclusion.

Has there been Double Jeopardy?

This Court has not set the final boundaries under the 14th Amendment for successive criminal proceedings which a State may pursue, involving the same acts charged to be the same offense. In Hoag v New Jersey, supra, some prohibited limits were indicated to be harrassment and attempts "to wear the accused out by a multitude of cases with accumulated trials." This Court said: "The question in any given case is whether such a course has led to fundamental unfairness." Appellants believe that such unfairness is shown in this case.

Appellants were tried upon one set of warrants in Municipal-County Court. Without any final disposition having been made of this set of warrants, the State compelled appellants to defend a set of indictments in Superior Court. When these indictments in Superior Court were called for trial, the State did not finally dispose of them, but instead took a nol pros with leave to proceed under them again at some future date. Immediately the State arrested appellants upon a second set of warrants in Municipal-County Court, and it is this set of warrants involved in this case. The indictments in Superior Court and the second set of warrants which are involved in this case were all issued after the State knew that the Federal

Courts had by Declaratory Judgment established as the "constitutional rights" of appellants the identical acts and conduct which the State seeks to establish as a crime in this case. The State's agencies were the defendants in the Declaratory Judgment action.

Appellants believe that the State has exceeded the permissible limits for successive criminal proceedings in this case. To say the least, these successive criminal proceedings have been sanctioned by the State "in order to allow a prosecutor who has been incompetent or casual or even ineffective to see if he cannot do better a second time," or in this case a third time. (See Concurring Opinion in Brock v North Carolina, supra.)

Sufficient Substantiality for Plenary Consideration

Appellants believe that the Federal questions presented are sufficiently substantial to require plenary consideration, with briefs on the merits and oral argument, for the following reasons:

1. That it is of great public importance whether or not a State may use its criminal statutes (and whether or not this has occurred in this case) to punish citizens for exercising Federal rights declared by the Federal Courts to be protected by the Constitution of the United States under the desegregation decisions of this Court. The fact that the State Courts in this case reached a diametrically opposite result from that reached by the Federal Courts, in considering the identical acts of playing golf on the public Municipal Gillespie Park Golf Course would seem to emphasize the importance of full consideration in this Court. The Federal Courts held that appellants were merely exercising their "constitutional rights" in playing on this golf course and that the prosecuting witnesses in the instant case had "unlawfully denied the plaintiffs as residents of the City of Greensboro, North Carolina, the privileges of using the Gillespie Park Golf Course," while the State Courts below have held that these identical acts of appellants constitute a crime under Section 14-134 of the General Statutes of North Carolina, which appellants contend is unconstitutional as construed and applied in this case.

2. What effect under the Supremacy Clause of the Federal Constitution State Courts must give to Declaratory Judgments of the Federal Courts, declaring "constitutional rights" under the desegregation decisions of this Court, presents a question in this case to which appellants believe this Court should give a definitive answer, including the question of whether or not State Courts must take judicial notice of such Declaratory Judgments in proceedings covering the identical acts with reference to which the "constitutional rights" were declared. So far as appellants have been able to discover, these questions have not been finally determined by this Court.

3. There is involved in this case State action in turning over to a corporation created by the State, a public municipal golf course, to operate without any standards whatsoever set up by statute or ordinance, the public golf course involved having been built originally with the Federal Government providing 65 per cent of the cost and the Sponsors having agreed with the Government to operate the golf course for the benefit of the public during its useful life, and having agreed further not to lease or otherwise dispose of the golf course to any private interest during its useful life. This appeal presents questions as to whether or not, without regard to racial exclusion, the State may use its criminal sanctions to enforce whatever ad hoc rules and regulations such corporation and its officers and agents may establish to admit or exclude from the privileges of the golf course only those citizens whom the corporation and its officers and agents wished to admit or exclude.

4. Appellants believe that the other Federal questions presented in this Statement As To Jurisdiction, especially the questions as to discrimination against Federal rights and the question of double jeopardy, have not been sufficiently determined by the decisions of this Court to warrant their submission without plenary consideration.

Conclusion

Wherefore, appellants pray that this Court note probable jurisdiction in this case and grant plenary consideration, with briefs on the merits and oral argument, and in the alternative

that consideration of the question of jurisdiction be postponed until such a consideration on the merits. Appellants pray further that, if they should be mistaken in their belief that this Court has jurisdiction of this appeal under 28 USC 1257 (2), then that the appeal papers in that event be treated as a Petition for Certiorari under 28 USC 2103, and that the Petition be granted. See Sweezy v New Hampshire and Pennsylvania v Board of Directors etc., both supra.

Counsel of Record for Appellants:

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Other Counsel for Appellants:

Harold L. Kennedy
Annie Brown Kennedy
C. O. Pearson
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Note: The Printed (Mimeographed) Record Below constitutes Pages 1 to 107 of the Transcript of the Record on this appeal. Therefore, page references to the Printed (Mimeographed) Record Below likewise refer to the same pages of the Transcript of the Record on this appeal.

APPENDIX "A"

NORTH CAROLINA SUPREME COURT SPRING TERM 1958

STATE
v.
PHILLIP COOKE

STATE
v.
LEON WOLFE

STATE
v.
GEORGE SIMKINS, JR.

STATE
v.
JOSEPH STURDIVENT

STATE
v.
SAMUEL MURRAY

STATE
v.
ELIJAH H. HERRING

No. 582 — Guilford

Appeal by defendants from Fountain, S. J., February 3, 1958 Criminal Term of Guilford (Greensboro Division).

On 2 December 1957 a warrant issued from the Greensboro Municipal-County Court for Phillip Cooke, charging that on 7 December 1955 he "did unlawfully and willfully enter and trespass upon the premises of Gillespie Park Club, Inc., after having been forbidden to enter said premises."

Similar warrants were on the same day issued for each of the other defendants.

Defendants moved in the Municipal-County Court to quash the warrants. Their motions were overruled. They then entered pleas of not guilty. The court, after hearing the evidence, found each defendant guilty and imposed sentence. Defendants appealed to the Superior Court.

Attorney General Seawell and Assistant Attorney General Moody for the State.

Annie Brown Kennedy, Harold L. Kennedy, William A. Marsh, Jr., and C. O. Pearson for defendant appellants.

Rodman, J. The cases were, without objection, consolidated for trial in the Superior Court.

Before pleading to the merits in the Superior Court, defendants renewed their motions to quash as originally made in the Municipal-County Court. The motions made in apt time were overruled by the court.

Before considering the merits of the cases, we must ascertain if defendants were properly called upon to answer the criminal charges leveled against them. The motions to quash assign three reasons why defendants should not be called upon to answer the allegation that they violated the criminal laws of the State of North Carolina.

S. v. Cooke, 246 NC 518, 98 SE 2d 885, is relied upon for two of the three reasons assigned. An examination of that case is necessary to assay the merits of the motions. The crime with which defendants stand charged is a misdemeanor punishable by fine of $50 or imprisonment for thirty days, G.S. 14-134. The Municipal-County Court has jurisdiction of the offense charged. In December 1955 these defendants were charged in warrants issuing from that court with trespassing on the property of **Gillespie Park Golf Course.** They were convicted and appealed to the Superior Court. That court's jurisdiction of the cases then before it was derivative and not original. In the exercise of its derivative jurisdiction, it was confined to an inquiry as to the truth of the charges contained in the warrants issuing from the Municipal-County Court. It could not, in the exercise of that jurisdiction, try defendants for a different crime. Nevertheless, the warrants were amended in the Superior Court to charge defendants with a trespass on the property of **Gillespie Park Golf Club, Inc.** Defendants were convicted of the crime charged in the amended warrants. Defendants appealed their conviction to this court. We held that the amended warrant, by substi-

tuting another property owner, charged a different crime from the crime originally charged, and for that reasor the Superior Court could not, in the exercise of its derivative jurisdiction, try defendants on the new criminal charge.

Since the conviction by a court without jurisdiction to hear and determine the guilt or innocence of defendants was a nullity and the sentence imposed void, defendants could thereafter be tried when properly charged in a court having jurisdiction. S. v. Hicks, 233 NC 511, 64 SE 2d 871, cert. den. 342 US 381, 96 L ed 629. It is manifest there is here no double jeopardy. Green v. United States, 355 US _____, 2 L ed 199, on which defendants rely, has no application to the facts here presented. Double jeopardy is a valid defense when established by the facts. N. C. Constitution, Art. I, sec. 17; S. v. Mansfield, 207 NC 233, 176 SE 761. Where not disclosed by allegations of the bill or warrant, it is not a ground to quash.

In closing the opinion in the previous appeal, the writer, author of the opinion, said: "Defendants may, of course, now be tried under the original warrant since the court was without authority to allow the amendment changing the crime charged; or they may be tried on bills found in the Superior Court for the crime attempted to be charged by the amendment."

The last clause of that opinion is also relied on in the motion to quash. The statement, accurate as to most of the counties of the State, is inaccurate with respect to Guilford and the other counties enumerated in the proviso to G.S. 7-64. The Legislature, in the exercise of its discretion, has denied to the Superior Court sitting in the counties named in the proviso to G.S. 7-64 the right to exercise concurrent jurisdiction with inferior courts in the trial of misdemeanors. Because of the limitations so imposed on the jurisdiction of the Superior Court of Guilford County, it could not exercise original jurisdiction of the crime charged, namely, trespass after being forbidden, and if defendants were to be prosecuted for the trespass presently charged, the prosecution had to originate in a court inferior to the Superior Court. This is made clear in the concurring opinion of Justice Parker, who said: "It seems plain

that a verdict of conviction or acquittal on the warrants in this case as drawn would not be a bar to the new warrants in the form to which they were changed by the amendments."

The third and final reason assigned for quashing the warrants is the refusal of the court to take judicial notice of a judgment in a suit by defendants against the City of Greensboro, the Greensboro City Board of Education, and Gillespie Park Golf Club, Inc. (Simkins v. City of Greensboro, 149 F Supp. 562) which adjudged the plaintiffs in that suit had been denied the privilege of using the property involved in that litigation because of their color or race. A motion to quash is a proper method of testing the sufficiency of the warrant, information, or bill of indictment to charge a criminal offense. It is not a means of testing the guilt or innocence of the defendant with respect to a crime properly charged. "The court, in ruling on the motion, is not permitted to consider extraneous evidence. Therefore, when the defect must be established by evidence **aliunde** the record, the motion must be denied." S. v. Cochran, 230 NC 523, 53 SE 2d 663; Richardson v. State, 4 SW 2d 79; 27 Am Jur 695.

Since none of the reasons nor all combined sufficed to sustain the motion to quash, the court correctly overruled the motion and put defendants on trial for the offense with which they were charged.

To invade property in the possession of another is a crime under our laws. The severity of the punishment for such invasion is measured by the character of the entry. But the essential ingredient in the crime is possession by the person named in the warrant. If the possession is actual, the State need only establish that fact, but if the State fails to establish actual possession, it must establish a right to possession which by operation of law implies possession. S. v. Clyburn, 247 NC 455; S. v. Cooke, **supra;** S. v. Baker, 231 NC 136, 56 SE 2d 424.

Defendants do not controvert the fact that the corporation named in the warrant had physical possession of the property nor do they deny that over the protest of the agent of the corporation they took possession. The conduct depicted and

not denied would suffice to convict defendants of a forcible trespass. G.S. 14-126. It could easily have resulted in a serious breach of the peace. The State did not, however, charge them with that offense. It charged only the less grave offense of entry after being forbidden. As a defense to that charge, it is sufficient for defendants to establish that they entered under a **bona fide** belief of a right to so enter, which belief had a reasonable foundation in fact. S. v. Paggart, 170 NC 737, 87 SE 31; S. v. Wells, 142 NC 590; S. v. Fisher, 109 NC 817, but the burden is on the defendant to establish facts sufficient to excuse his wrongful conduct. S. v. Durham, 121 NC 546; S. v. Wells, **supra.** There was nothing in the State's evidence showing or tending to show any right on the part of defendants to enter after having been forbidden to do so. Hence the court correctly refused to allow defendants' motion for nonsuit.

Defendants offered in evidence a lease dated 19 April 1949 from the Board of Trustees of the Greensboro City Administrative Unit to Gillespie Park Golf Club, Inc. This lease recited that the property therein described had in 1947 been leased to the City of Greensboro so that the city might operate a golf course thereon, that Greensboro had agreed to cancel its rights under the lease, that lessor was of the opinion that it would not need the property for school purposes during the next ensuing five years and "since a nine-hole golf course has been laid out thereon, the Board of Trustees is of the opinion that it is advisable to lease the property to the Golf Club in order that its use as a golf course may be continued during the term of this lease, such use being, in the opinion of the Board of Trustees, a public or semipublic use." The lease was for a period of five years at a rental of $1000 per annum, but with a provision that lessor might cancel upon sixty days' notice if the property was needed for school purposes or if lessor desired to sell. An extension agreement was put in evidence extending lessee's term. The asserted trespass occurred during the extended term.

There is evidence that lessee had, during its term, expended more than $100,000 in enlarging the course from a nine-hole course to an eighteen-hole course, constructing a

club house, and making other improvements. Defendants offered in evidence by-laws adopted by lessee. The only two which may have any pertinency to this action are sections 1 and 2 of article 1. They provide: "SECTION 1 — Membership. Membership in this corporation shall be restricted to members who are approved by the Board of Directors for membership in this Club. There shall be two types of membership; one, the payment of a stipulated fee of $30.00 or more, plus tax, shall cover membership and greens fees. The other type of membership shall be $1.00, plus tax, but this type of member shall pay greens fees each time he uses the course. The greens fees and the amount of membership fees may be changed by the Board of Directors at any time upon two-thirds vote of the members of the Board. SECTION 2 — Use of Golf Facilities. The golf course and its facilities shall be used only by members, their invited guests, members in good standing of other golf clubs, members of the Carolina Golf Association, pupils of the Professional and his invited guests."

The City Administrative Unit, a governmental agency separate and distinct from the City of Greensboro, had no authority to operate recreational facilities which were not in some way related to the operation of the public school system. The Legislature created both County and City Administrative Units "for purposes of school administration." G.S. 115-4. The Administrative Unit, having acquired more land than was presently needed for school purposes, had legislative authority to lease the surplus. G.S. 115-126(5), Cline v. Hickory, 207 NC 125, 176 SE 250, 38 Am Jur 169. In the exercise of its discretion it could in good faith lease for a public or a private purpose. Prior to its lease to Gillespie Park Club, it had leased the property to the City of Greensboro. The City had apparently used it for recreational purposes and had erected a golf course thereon. When that lease terminated, the school authorities leased to a private corporation, but in their lease were careful to state that lessee was taking and would use it for public or semipublic purposes, namely, the operation of a golf course. Having expressly declared that the use which the lessee would make was a public or semipublic use, the law will presume the parties intended and contemplated that

the property should be used without unlawful discrimination because of race, color, religion, or other illegal classification. "It is an elementary rule of construction that parties will be presumed to have used language effectuating a lawful purpose rather than one which is unlawful." Beasley v. R.R., 145 NC 272; Newberry v. City of Andalusia, 57 So 2d 629. Since the operator of the golf club was charged with making a public or semipublic use of the property, it could not deny the use of the property to citizens simply because they were Negroes. This Court gave definite recognition to the principle of equality of treatment as between whites and Negroes nearly three-quarters of a century ago. Puitt v. Commissioners, 94 NC 709.

Dawson v. Mayor and City Council of Baltimore City, 220 F 2d 386; Lawrence v. Hancock, 76 F Supp. 1004; Tate v. Department of Conservation and Development, 133 F Supp 53; Culver v. City of Warren, 83 NE 2d 82, cited and relied upon by appellants are but applications of an established legal principle to the factual situations found to exist in each of those cases. This case in no wise questions the soundness of the legal principles there enunciated.

Since the decision in Brown v. Board of Education, 347 US 483, 98 L ed 873, 74 S Ct 686, separation of the races in the use of public property cannot be required. Judge Fountain expressly charged the jury that defendants could not be discriminated against because of color. He charged: "Now as to that question which arises upon the evidence, I instruct you then, ladies and gentlemen of the jury, that under the law as determined by the United States Court and as pronounced by them, the Gillespie Golf Club, Inc., by leasing the land from the City of Greensboro to use as a golf course was subjected to the same obligations as the City of Greensboro would have been had it operated a golf course itself. It was subjected to the same rights as the City would have had the same obligations and same responsibilities; that is to say, the law would not permit the City and, **therefore, would not permit its lessee, the Gillespie Park Golf Club, Inc., to discriminate against any citizen of Greensboro in the maintenance and operation and use of a golf course. It could not**

exclude either defendant because of his race or for any other reason applicable to them alone; that is to say, they were entitled to the same rights to use the golf course as any other citizen of Greensboro would be, provided they complied with the reasonable rules and regulations for the operation and maintenance and use of the golf course. They would not be required to comply with any unreasonable rules and regulations for the operation and maintenance and use of the golf course."

It will be observed that Judge Fountain, in his charge, treated the lease as though it were made by the City of Greensboro in the exercise of one of its corporate functions. In fact the lease was made by the school unit which had no duty or right to operate a golf course but which voluntarily provided for public use.

The court further charged: "If the corporation organized and known as the Gillespie Park Golf Club, Inc., if it maintained property and operated and used it for a golf course belonging to the City of Greensboro, and if the defendant was a resident of the City of Greensboro, then he had the same right to become a member of the golf club as any other resident of Greensboro, if he was a member of another golf club which had a reciprocal agreement with the Gillespie Park Golf Club to permit members on one course or members of one club playing on the other course, then such defendant and each of them had the same right or had the right to play upon the Gillespie Park Course. If the defendants, or either of them, were guests of some members of the Gillespie Park Golf Club, then they had a right to play upon that course.

"In other words, ladies and gentlemen of the jury, they had the same right under the laws as interpreted by the United States Courts to play on the golf course as any other citizen of the City of Greensboro provided they complied with the reasonable rules and regulations designed for the orderly maintenance and use of the golf course by the citizens of Greensboro."

He further charged, after stating defendants' contentions with respect to their right to play: "I instruct you, members of

the jury, if a party entering upon the land has a legal right to do so, of course he may not be convicted of a trespass."

Defendants moved to set aside the verdict of guilty. As the basis for their motion they rely on Simkins v. City of Greensboro, **supra**, decided by the United States District Court in March 1957. Although defendants had the record in that case identified, they did not offer it in evidence. It is not a part of the record presented to us. Our knowledge of the facts in that case is limited to what appears in the published opinion.

Examining the opinion, it appears that ten people, six of whom are defendants in this action, sought injunctive relief on the assertion that Negroes were discriminated against and were not permitted to play on what is probably the property involved in this case. We do not know what evidence plaintiffs produced in that action. It is, however, apparent from the opinion that much evidence was presented to Judge Hayes which was not before the Superior Court when defendants were tried. It would appear from the opinion that the entry involved in this case was one incident on which plaintiffs there relied to support their assertion of unlawful discrimination, but it is manifest from the opinion that that was not all of the evidence which Judge Hayes had. We are left in the dark as to other incidents happening prior or subsequent to the conduct here complained of, which might tend to support the assertion of unlawful discrimination. On the facts presented to him, Judge Hayes issued an order enjoining racial discrimination in the use of the golf course. Presumably that order has and is being complied with. No assertion is here made to the contrary.

To support their motion, defendants say in their brief: "That to allow the verdict to stand would amount to a collateral attack on the Federal decision." The mere assertion that a court of this State has not given due recognition to a judgment rendered by one of our Federal courts merits serious consideration.

The State challenges the assertion that there has been an attack, collateral or otherwise, on the judgment rendered by

the District Court. It maintains that the questions to be answered are these: (1) Should a court take judicial knowledge of facts found at another time by another court in another action; and if this question be answered in the affirmative, (2) is the State, in a criminal prosecution, concluded by facts found in a civil action to which it is not a party?

Since defendants for reasons best known to themselves elected not to offer in evidence the record in the Federal court case, it is apparent that the first question propounded must be answered. Unless we are to depart from previous adjudications by this Court and similar decisions by the Federal courts and the courts of sister States, the answer to that question must be no.

Speaking with respect to judicial notice, Chief Justice Marshall said: "The looseness which would be introduced into judicial proceedings would prove fatal to the great principles of justice, if the judge might notice and act upon facts not brought regularly into the cause. Such a proceeding, in ordinary cases, would subvert the best established principles, and overturn those rules which have been settled by the wisdom of ages." U.S. v. Wilson, 7 Pet. 150, 8 L ed 640.

Mr. Justice Miller said: "While it is certainly true that the pendency of a suit in one court is not a defense, though it may sometimes be good in abatement, to another suit on the same cause of action in another court of concurrent jurisdiction, it may be considered as established that when a judgment is recovered against the defendant in one of those courts, if it is a full and complete judgment on the whole cause of action, it may be pleaded as a defense to the action in that court where it is pending and undecided. Neither court would be bound to take notice of the judgment in the other court judicially." Schuler v. Israel, 120 US 506, 30 L ed 707. To like effect see S. v. McMilliam, 243 NC 775, 92 SE 205; Reid v. Holden, 242 NC 408, 88 SE 2d 125; Hampton v. Pulp Co., 223 NC 535, 27 SE 2d 538; Daniel v. Bellamy, 91 NC 78; Bluthenthal v. Jones 208 US 64, 52 L ed 390; Williams-Perry v. Reeder, 17 NW 2d 98; Naffah v. City Deposit Bank, 13 A 2d 63; Belyeu v. Bowman, 41 So 2d 290;

James v. Unknown Trustees, Etc., 220 P 2d 831; Swak v. Department of Labor & Industries, 240 P 2d 560; Paridy v. Caterpillar Tractor Co., 48 F 2d 166; Morse v. Lewis, 54 F 2d 1027; Helms v. Holmes, 129 F 2d 263; Atlantic Fruit Co. v. Red Cross Line, 5 F 2d 218; Polzin v. National Co-op Refinery Ass'n., 266 P 2d 293; Divide Creek Irrig. Dist, v. Hollingsworth, 72 F 2d 859, 96 ALR 937, with annotations; White v. Central Dispensary & Emergency Hospital, 99 F 2d 355, 119 ALR 1002; Robinson v. Baltimore & O. R. Co., 222 US 506, 56 L ed 288; 31 CJS 627; 20 Am Jur 102.

Because the judgment in the case of Simkins v. Greensboro was not in evidence, the court had no knowledge in a legal sense of any facts there determined, and could make no pronouncement of law with respect to facts which were not in evidence. Judge Hayes' published opinion was available. That opinion is a declaration of the law on the facts which Judge Hayes found.

Since the court was not required to take judicial notice of the judgment in the civil action, we are not called upon to determine the effect which should have been given if offered in evidence.

When the doctrine of collateral estoppel should be applied is not always easily solved. In Van Schuyver v. State, 8 P 2d 688, it was held that a judgment in a civil action between prosecuting witness and defendant which determined the ownership of domestic fowl could not be used by the defendant in a criminal action to estop the State from prosecuting him on a charge of larceny. Similar conclusions have been reached in other jurisdictions with respect to the ownership of property. State v. Hogard, 12 Minn 293; People v. Leland, 25 NYS 943; Hill v. State, 3 SW 764 (Tex.)

It is said in the annotation to Mitchell v. State, 103 AM St Rep 17: "When the previous judgment arose in a case in which the state or commonwealth was the prosecutor or plaintiff and the defendant in the case at bar was also the defendant, and the judgment was with reference to a subject which is material to the case at bar, the doctrine of res judicata applies. (citations) But where the judgment to which it is sought

to apply the doctrine of res judicata was rendered in a civil proceeding to which the state was not a party, or in a criminal proceeding to which the defendant in the case at bar was not a party, the doctrine of res judicata does not apply. (citations)"

The Supreme Court of the United States has recognized and applied the law as there announced to differing factual situations. Compare U. S. v. Baltimore & O. R. Co., 229 US 244, 57 L ed 1169, and Williams v. N. C., 325 US 226, 89 L ed 1577. Other illustrations may be found in: S. v. Dula, 204 NC 535, 168 SE 836; Warren v. Ins. Co., 215 NC 402, 2 SE 2d 17; Powers v. Davenport, 101 NC 286; S. v. Boland, 41 NW 2d 727; People v. McKenna, 255 P 2d 452; S. v. Morrow, 75 P 2d 737; S. v. Cornwell, 91 A 2d 456; S. v. Greenberg, 109 A 2d 669. Extensive annotations appear as a note to Green v. State, 87 ALR 1251; 30A Am Jur 518. Defendants were not, as a matter of right, entitled to have the verdict set aside.

The exceptions to the admission and exclusion of evidence have been examined. We have found none which indicates prejudicial error or appears to warrant discussion.

We find

No error.

APPENDIX "B"

JUDGMENT — SUPREME COURT OF NORTH CAROLINA
SPRING TERM, 1958 NO. 582 GUILFORD COUNTY

STATE

vs.

Phillip Cooke, Leon Wolfe, George Simkins, Jr.,

Joseph Sturdivent, Samuel Murphy, Elijah H. Herring

This cause came on to be argued upon the transcript of the record from the Superior Court Guilford County: Upon consideration whereof, this Court is of opinion that there is no error in the record and proceedings of said Superior Court.

It is therefore considered and adjudged by the Court here that the opinion of the Court, as delivered by the Honorable William B. Rodman Justice, be certified to the said Superior Court, to the intent that the proceedings be had therein in said cause according to law as declared in said opinion. And it is considered and adjudged further, that the defendants and surety to the appeal bond, Southern Fidelity Mutual Insurance Company, do pay the costs of the appeal in this Court incurred, to wit, the sum of One Hundred and 20/100 dollars ($100.20), and execution issue therefor.

A TRUE COPY

Adrian Newton
Clerk of the Supreme Court.

APPENDIX "C"

STATE
vs.
PHILLIP COOKE

STATE
vs.
LEON WOLFE

STATE
vs.
GEORGE SIMKINS, JR.

STATE
vs.
JOSEPH STURDIVENT

STATE
vs.
SAMUEL MURRAY

STATE
vs.
ELIJAH H. HERRING

(Filed 28 June, 1957.)

Appeals by defendants from Burgwyn, E. J., December 1956 Criminal Term of Guilford (Greensboro Division).

On 7 December 1955 six warrants issued from the Greensboro Municipal-County Court on affidavit of Ernest Edwards charging the defendants therein named "did unlawfully and willfully trespass upon the property of Gillespie Park Golf Course, Greensboro, North Carolina, after having been forbidden to do so." The cases were heard in the Municipal-County Court on 6 February 1956. Each defendant was found guilty, and from the sentence imposed each appealed to the Superior Court. The cases were by consent consolidated for trial in the Superior Court.

Ernest Edwards, on whose affidavit the warrants issued, testified: "I'm employed as a golf professional manager of

the Gillespie Park Golf Club, Incorporated. The golf club is an 18-hole club with club house. It's located on Asheboro Street and Randolph Avenue on the new Super Highway . . . . Back on the 7th day of December, 1955, I was employed as manager of Gillespie Park Golf Course, Incorporated. At that time one of my functions was to operate the Gillespie Park Golf Course."

He was asked: "On that date, the 7th day of December, 1955, state whether or not the corporation was in possession of the Gillespie Park Golf Course. A. It was."

Witness testified that defendants, on the date named, over his protest, played golf on the course.

When the State rested, defendants moved for nonsuit. Before the motion was heard, the solicitor asked the court to reopen the case so that he might make a motion to amend the warrants. His request was granted; whereupon, over the objection of defendants, the warrants were amended to read: "Did unlawfully and willfully enter and trespass upon the premises of Gillespie Park Golf Club, Inc., after having been forbidden to enter said premises and not having a license to enter said premises against the statute in such cases made and provided and against the peace and dignity of the State."

After the warrants were amended, defendants offered a lease by the City of Greensboro to Gillespie Park Golf Course, Inc., dated 7 April 1949, for a term of one year, of the city's club house and golf course. Renewals of this lease were offered in evidence, the last renewal bearing date 2 April 1953 extending lessee's term to 6 April 1958.

The jury returned a verdict of guilty as to each defendant. Judgments were entered on the verdicts and defendants appealed.

Attorney-General Patton and Assistant Attorney-General Giles for the State.

J. Kenneth Lee, Major S. High, C. O. Pearson, and William A. Marsh, Jr., for defendant appellants.

RODMAN, J. The crime of which defendants stand convicted is the entrance without a bona fide claim of right on land in the possession of another after having been forbidden to so enter. The act is made a crime by statute, G.S. 14-134. The statute carries the heading "Trespass on land after being forbidden . . ."

". . . every unauthorized, and therefore unlawful, entry into the close of another, is a trespass." Dougherty v. Stepp, 18 N.C. 371; Armstrong v. Armstrong, 230 N.C. 201, 52 S.E. 2d 362; Lee v. Stewart, 218 N.C. 287, 10 S.E. 2d 804; Brame v. Clark, 148 N.C. 364.

By the common law an unauthorized entry on the lands of another was redressed by civil action, but where the entry was made by means of force or threats apt to disrupt the peace, the trespass was made a crime in England prior to Sir Walter Raleigh's ill-fated attempt to establish a colony on our shores. Such a disturbance of possession is a statutory crime under our laws. G.S. 14-126. To convict one of the crime of forcible trespass, it is essential for the State to establish an entry with such force as to be "apt to strike terror" to the prosecutor whose possession was disturbed. It is necessary to allege and establish actual possession in the prosecutor. S. v. Simpson, 12 N.C. 504; S. v. McCauless, 31 N.C. 375; S. v. Ray, 32 N.C. 39; S. v. Laney, 87 N.C. 535; S. v. Davenport, 156 N.C. 597, 72 S.E. 7. Whether the right to possession was a good defense at common law was left unsettled in S. v. Ross, 49 N.C. 315.

In 1866 the Legislature made it a crime to invade possession even though the forbidden entry was made without force or threats. Good faith in making the entry is a defense. S. v. Wells, 142 N.C. 590; S. v. Crosset, 81 N.C. 579; S. v. House, 71 N.C. 518; S. v. Hanks, 66 N.C. 612. But possession is an essential element of the crime. If the State fails to establish that prosecutor has possession (actual or constructive) no crime has been established. S. v. Baker, 231 N.C. 136, 56 S.E. 2d 424; S. v. Faggart, 170 N.C. 737, 86 S.E. 31; S. v. Yellowday, 152 N.C. 793, 67 S.E. 480; S. v. Whitehurst, 70 N.C. 85.

Where an interference with the possession of property is

a crime, it is necessary to allege in the warrant or bill of indictment the rightful owner or possessor of the property, and the proof must correspond with the charge. If the rightful possession is in one other than the person named in the warrant or bill, there is a fatal variance. Such has been the holding in forcible trespass, S. v. Sherrill, 81 N.C. 550; in trespass after being forbidden, S. v. Baker, supra, and in malicious injury to property, S. v. Hicks, 233 N.C. 31, 62 S.E. 2d 497; S. v. Mason, 35 N.C. 341; in larceny, S. v. Law, 227 N.C. 103, 40 S.E. 2d 699; S. v. Harris, 195 N.C. 306, 141 S.E. 883; S. v. Harbert, 185 N.C. 760, 118 S.E. 6. See also Adams v. State, 119 So. 189 (Miss.); Brown v. State, 85 S.E. 262 (Ga.); 87 C.J.S. 1113; 42 C.J.S. 1054; 27 Am. Jur 649.

On the appeal defendants could only be tried for the crime for which they were convicted in the Municipal-County Court, viz., disturbing the possession of Gillespie Park Golf Course. The Superior Court could try them for a different crime upon a bill found or waived. S. v. Mills, 242 N.C. 604, 89 S.E. 2d 141; S. v. Banks, 241 N.C. 572, 86 S.E. 2d 76; S. v. Hall, 240 N.C. 109, 81 S.E. 2d 189; S. v. Thomas, 236 N.C. 454, 73 S.E. 2d 283; S. v. Mills, ante, 237.

The Superior Court has broad power to allow amendments to warrants. This power to amend is the power to make accurate and sufficient the statement of the crime asserted or attempted to be asserted. The court has no power to permit a warrant to be amended so as to charge an entirely different crime from the one on which defendant was convicted in the lower court. S. v. McHone, 243 N.C. 231, 90 S.E. 2d 536; S. v. Clegg, 214 N.C. 675, 200 S.E. 371; S. v. Goff, 205 N.C. 545, 172 S.E. 407; S. v. Taylor, 118 N.C. 1262.

When the court permitted the warrants to be amended so as to charge a trespass on property of a person (Gillespie Park Golf Club, Inc.) other than property of the person named in the original warrant, it substituted one criminal charge for another criminal charge. This different crime could only be charged by bill found or waived. The defendants have not waived bills.

The record discloses the fatal variance. It is our duty to

note it. S. v. Scott, 237 N.C. 432, 75 S.E. 2d 154; S. v. Stonestreet, 243 N.C. 28, 89 S.E. 2d 734; S. v. Strickland, 243 N.C. 100, 89 S.E. 2d 781. Defendants may, of course, now be tried under the original warrant since the court was without authority to allow the amendment changing the crime charged; or they may be tried on bills found in the Superior Court for the crime attempted to be charged by the amendment. S. v. Strickland, supra; S. v. Hicks, 233 N.C. 511, 64 S.E. 2d 871; S. v. Sherrill, 82 N.C. 694.

The judgment is

Arrested.

Parker, J., concurring: In considering the amendments to the warrants the difficulty is in determining whether the amendments are as to a matter of form or go to the substance of the charge. I find in Annotations in 7 A.L.R., p 1526 et seq., and in 68 A.L.R., p. 930 et seq., the statement that "the allowance by the court of an amendment to an indictment as to the name of the person alleged therein to be the owner of the property which is the subject of the crime is generally authorized, as the correction of a defect in form." In support of the text, cases are cited from Iowa, Louisiana, Mississippi, New York, Pennsylvania, Vermont, Canada and England. An examination of a number of the cases cited discloses that the decisions were based on statutes of the various jurisdictions permitting in substance an amendment when a variance develops between the allegations in an indictment and the testimony as to the ownership of property.

Our statute G.S. 15-148—Manner of alleging joint ownership of property—does not permit the amendments allowed in the instant case. Nor do I know of any statute of ours that does so.

Warrants are, in most instances, drafted by laymen who are not learned in the technicalities of the law, and are not familiar with the necessity of stating in the warrant the correct name of the owner of property. The essence of the offense here is a trespass upon land after being forbidden. G.S. 14-134. The correct name of the lessee of the golf course was

not stated in the original warrants. A study of the Record and defendants' brief discloses that the amendment to the warrants so as to allege the correct name of the lessee of the golf course did not affect the defense, or take the defendants at a disadvantage in any respect, as shown by the fact that their brief does not contend the allowance of the amendments to the original warrants was error. Yet, because of the defect in the name of the lessee, and by reason of the fact that we have no statute to permit an amendment in such a case, the judgment is arrested. The time of the trial has been wasted, and if the State desires to proceed further, it must start anew with new warrants.

One test to determine whether the change made was material is whether a verdict of conviction or acquittal on the warrant as drawn would be a bar to a warrant in the form in which it stood after the amendment. Com. v. Snow, 269 Mass. 598, 169 N.E. 542, 68 A.L.R. 920. It seems plain that a verdict of conviction or acquittal on the warrants in this case as drawn would not be a bar to the new warrants in the form to which they were changed by the amendments. It follows from these considerations that the change made in the warrants was one of substance and not of form.

In my opinion, the General Assembly, in its wisdom, should consider the advisability of enacting a statute that warrants issued by Justices of the Peace, Municipal or County Criminal Courts, can be amended on or before the trial, when there shall appear to be any variance between the allegations in the warrant and the evidence in setting forth the ownership of property, if the court should be of opinion that the amendment will not prejudice the defendant in his defense. Various states have done so, as appears in the cases cited in the A.L.R. Annotations referred to above.

APPENDIX "D"

IN THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

Phillip Cooke, Leon Wolfe, George Simkins, Jr., Joseph Sturdivant, Samuel Murray, and Elijah H. Herring, Appellants

v.

State of North Carolina
No. 582 — Guilford

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I. Notice is hereby given that Phillip Cooke, Leon Wolfe, George Simkins, Jr., Joseph Sturdivant, Samuel Murray, and Elijah H. Herring, the appellants above named, hereby appeal from the final order of the Supreme Court of North Carolina affirming and finding no error in the judgment of conviction and sentence of said appellants, which judgment and sentence were entered by the Superior Court of Guilford County, North Carolina, on February 10, 1958, and the opinion of the Supreme Court of North Carolina affirming and finding no error in said judgment of conviction and sentence having been filed in the office of the Clerk of the Supreme Court of North Carolina on June 4, 1958, and the final order pursuant to said opinion having been entered as of the same date as said opinion.

This appeal is taken pursuant to 28 USC Sec. 1257 (2).

Appellants have been tried twice upon two separate and successive sets of warrants in the Municipal-County Court of Greensboro, Guilford County, North Carolina, for the same acts of playing golf on the public municipal Gillespie Park Golf Course, the crime charged on each occasion being that of simple trespass under Section 14-134 of the General Statutes of North Carolina (1953). The first trial resulted in conviction and sentence to a fine of $15. On appeal and trial de novo in the Superior Court of Guilford County, North Carolina, there was a jury trial and verdict of guilty and a sentence

of 30 days in jail. On appeal to the Supreme Court of North Carolina the judgment of the Superior Court was arrested, not upon any ground set up by appellants, but because the Supreme Court found that the Superior Court lost jurisdiction and its actions were a nullity, when it permitted the warrants to be amended to change the name of the prosecuting witness from Gillespie Park Golf Course to Gillespie Park Golf Club, Inc. No further action was taken either by the Supreme Court or the Superior Court with reference to the original warrants and judgment and sentence in the Municipal-County Court.

Thereafter, on December 2, 1957, entirely new warrants charging appellants with the same offense were issued in the Municipal-County Court of Greensboro, Guilford County, North Carolina. The trial in Municipal-County Court resulted again in conviction and the sentence was 30 days in jail, to be suspended upon the payment by each appellant of a fine of $1. Upon a trial de novo upon appeal to the Superior Court of Guilford County, North Carolina, there was a jury verdict of guilty and the Court's judgment and sentence of 15 days in jail. On appeal the Supreme Court of North Carolina affirmed and found no error in the trial, judgment and sentence.

Appellants are presently enlarged upon bail in the sum of $200 each and a stay of execution by a Justice of the Supreme Court of North Carolina.

II. The Clerk of the Supreme Court of North Carolina will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The Record in this cause as printed and filed for use of the Supreme Court of North Carolina upon appeal during the Spring Term of 1958, No. 582, coming from the Superior Court of Guilford County, North Carolina, and all other papers which were before said Supreme Court upon said appeal.

2. The Opinion of the Supreme Court of North Carolina which was filed in this cause on June 4, 1958.

3. The final order affirming and finding no error in the proceedings of the Superior Court of Guilford County, entered as of June 4, 1958.

4. Any and all orders staying execution in this cause.

5. This Notice of Appeal to the Supreme Court of the United States, with Proof of Service of same.

III. The following questions are presented by this appeal:

1. Is Section 14-134 of the General Statutes of North Carolina (1953), as construed and applied by the State Courts in this case, unconstitutional under the Constitution of the United States, including the Supremacy Clause (Art. 6, Cl. 2), and also including the Fourteenth Amendment as interpreted by the United States District Court for the Middle District of North Carolina in George Simkins et al. v. City of Greensboro et al., 149 Fed. Supp. 562, and by the Court of Appeals for the Fourth Circuit affirming in City of Greensboro et al. v. George Simkins et al. 246 Fed. 2d 425?

2. Could the State agencies in this case, namely, City of Greensboro, Greensboro City Board of Education, and Gillespie Park Golf Club, Inc., consistent with the Equal Protection Clause of the Fourteenth Amendment of the Constitution of the United States, promulgate written regulations converting the public municipal Gillespie Park Golf Course, originally constructed with the Federal Government providing 65 per cent of the cost, into a private-club membership-only golf course, excluding all citizens who did not meet the membership rules? and do the membership rules as set out in the record thus limiting the use and enjoyment of this public municipal golf course, having been promulgated by State agencies, violate the Equal Protection Clause of the Fourteenth Amendment? and, said State agencies having adopted a written rule making eligible to play on said public municipal golf course "members in good standing of other golf clubs," could the State agencies operating the golf course, consistent with the Equal Protection Clause of the Fourteenth Amendment, arbitrarily in practice limit use and enjoyment of the golf course to those "members in good standing of other golf clubs"

whose golf clubs were members of the Carolina Golf Association?

3. Was it the duty of the State Courts in this case to accept as true the allegations asserting appellants' Federal rights in their motion to quash the warrants and in their motion to set aside the verdict and for judgment notwithstanding the verdict, in view of the fact that the State did not answer to deny or controvert any of said allegations?

4. In its opinion in this case the Supreme Court of North Carolina having said, with reference to the Federal case cited in Question No. 1 above, that "Our knowledge of the facts in that case is limited to what appears in the published opinion," and having also said that "It would appear from the opinion that the entry involved in this case was one incident on which plaintiffs there relied to support their assertion of unlawful discrimination," was it the duty of the State Courts in this case, under the Supremacy Clause (Art. 6, Cl. 2) of the Constitution of the United States, to consider and give effect to all of the facts set forth in said opinion of the Federal Court, and having taken judicial notice of said opinion, was it also the duty of the State Courts under the Supremacy Clause to take judicial notice of the Federal Court's Findings of Fact, Conclusions of Law, and Declaratory Judgment, in order to determine the extent to which the acts and conduct held by the State Courts to be a crime in this case were held by the Federal Courts to be protected by the Fourteenth Amendment to the Constitution of the United States?

5. The Supreme Court of North Carolina having held on May 7, 1958 in State v. Perry, 248 N.C. 334, that the unconstitutionality of a jury panel under the Constitution of the United States could be shown by evidence upon a motion to quash the indictment, was it a discrimination against the Federal rights asserted by appellants in this case for the State Courts to deny the request made by the appellants in their motion to quash the warrants and again in their motion to set aside the verdict, for an opportunity to present the record in the Federal case cited in Question No. 1 above upon the hearing of said motions?

6. Was it a discrimination against and an infringement upon the Federal rights asserted by appellants in this case for the State Courts to refuse to give effect to Finding of Fact No. 30 and Finding of Fact No. 33 in the Federal case cited in Question No. 1 above, both of which Findings of Fact were quoted verbatim in appellants' motion to set aside the verdict, and the State not having answered to deny or controvert the allegations of said motion in any way?

7. The Supreme Court of North Carolina having held consistently prior to this case that said Section 14-134 of the General Statutes of North Carolina did not apply to public lands but only to "the possession or right of possession of real estate privately held," (State v. Clyburn, 247 N.C. 455), was it a discrimination against the Federal rights asserted by appellants for the North Carolina Supreme Court to depart from this rule and hold that the statute did apply to the alleged trespass upon the public municipal golf course involved in this case?

8. The Supreme Court of North Carolina having approved in its opinion in this case the charge to the jury that "if a party entering upon the land has a legal right to do so, of course he may not be convicted of a trespass," and the Declaratory Judgment in the Federal case cited in Question No. 1 above having declared that the interference with and causing appellants to be arrested for playing on the golf course "was done solely because of the race and color of the" appellants "and constitutes a denial of their constitutional rights," (said Declaratory Judgment being quoted verbatim in appellants motion to set aside the verdict, and the State having not answered to deny or controvert said motion), was it a violation of the duty of the State Courts under the Supremacy Clause and of the rights of appellants under the Fourteenth Amendment of the Constitution of the United States for the Supreme Court of North Carolina to hold in this case that the State Courts were not concluded by the Federal Court's determination of the "constitutional rights" of the appellants, and to submit to the State's jury the determination of this Federal "legal right" of appellants under the Constitution of the United States to play on this public municipal golf course?

9. The Supreme Court of North Carolina having gone outside the record before it to find in its opinion in this case the true fact concerning the Federal case cited in Question No. 1 above that "defendants had the record in that case identified," did the Equal Protection Clause of the Fourteenth Amendment require the Court to note the further true fact that the records in said Federal case were in fact identified as "Defendants' Exhibits 6 and 7," in order that the Court might see the further true fact that said Exhibits 6 and 7 were in fact offered in evidence and their admission refused by the Trial Judge, as shown on Page 77 of the printed record before the Supreme Court of North Carolina?

10. Appellants having been tried twice upon two separate and different sets of warrants for the same alleged offense in the Municipal-County Court of Greensboro, Guilford County, North Carolina, and the first set of warrants and the conviction and sentence thereunder being still outstanding and undisposed of at the time of the issuance of the second set of warrants and the trial and conviction thereunder, does the second trial and conviction and sentence amount to the kind of double jeopardy which the 14th Amendment forbids as a denial of due process?

Dated this 27th day of August, 1958.

Harold L. Kennedy
C. O. Pearson

PROOF OF SERVICE

I, T. W. Bruton, Assistant Attorney General of the State of North Carolina, hereby acknowledge receipt of a copy of the foregoing Notice of Appeal to the Supreme Court of the United States, this the 27 day of August, 1958.

T. W. Bruton

APPENDIX "E"

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Upon due consideration of the evidence and argument of counsel the court makes the following findings of fact:

1. In 1927 the school board purchased approximately 70 acres of land in the southwestern part of the city for school purposes, this land being thereafter known as the Gillespie school property or land. This was more land than was immediately needed for school purposes, but the excess was held for future needs. In 1940 the City had an opportunity to secure from the Works Progress Administration 65% of the cost of constructing a nine-hole public golf course for the citizens of Greensboro. An arrangement was thereupon made between the City and the school board whereby the school board, sometime between August 20, 1940, and July 6, 1942, leased to the City a portion of the Gillespie School property in order that a public golf course might be constructed and operated thereon. The lease was made for a term of five years and thereafter from year to year, subject to the provision that it might be terminated by either party thereto upon ninety days written notice to the other, but that such right should not be exercised by the school board during the first five years unless the land was needed for school purposes. The rental was fixed at $1.00 a year, plus $40.00 a month for the dwelling house located on the land beginning when the house was made available for the City. The lease provided that the city should have full charge of the golf course and the operation thereof without interference on the part of the school board and that the city might make such charges for the use thereof as it might deem advisable.

(Note. This lease is the school board's Exhibit No. 1. It is not dated, and there is nothing to show when it was executed except by reference to the acknowledgments. It was acknowledged for the school board on August 20, 1940, and for the city on July 6, 1942. For that reason the lease is referred to as having been executed between August 20, 1940, and July 6, 1942. For findings suggested

in the above paragraph, see also paragraph 15(b) of the school board's answer and the stipulation relating thereto.)

2. The golf course was constructed and was operated under that lease by the city until April 1, 1947, when a new lease to the city was executed by the school board, the provisions of the lease being substantially as in the original lease, except that the rental was fixed at $1,000.00 a year, and the term of the lease was for one year and thereafter from year to year. On April 7, 1949, that lease was in effect and the then term would have expired April 1, 1950.

(See school board's Exhibit No. 2, also paragraph 15(b) of the school board's answer and the stipulations relating thereto.)

3. About this time the city constructed or assisted in the construction of an additional nine holes of the golf course upon a tract of land which was adjacent to the tract on which the original nine holes had been constructed.

(See amendment to paragraph 15(b) of the school board's answer and the stipulation relating thereto.)

4. On April 7, 1949, the city executed a lease whereby it leased to Gillespie Park Golf Course, Inc., the portion of the golf club owned by the City.

(See plaintiffs' exhibit No. ., lease dated April 7, 1949.)

5. On April 13, 1949, the City Council of the City of Greensboro adopted a resolution reciting that the city council was of the opinion that the best interest of the city would be served by the operation of the municipal golf course by a non-profit corporation instead of by the city and that the best interest of the city would be served by the leasing of that portion of the golf course owned by the school board to Gillespie Park Golf Club, Inc., and requesting the school board to join the city in the leasing of the whole of the golf course to the golf club.

(See the school board's Exhibit No. 3 and paragraph 15(b) of the school board's answer and the stipulation relating thereto.)

6. Pursuant to such request of the city council, the school board, under date of April 19, 1949, leased to the golf club that portion of the golf course owned by the school board for a term of five years, with the provision that the school board, if it needed the property for school purposes or if it desired to offer it for sale, might terminate the lease upon sixty days written notice to the other party. The lease fixed the rent at $1,000.00 a year provided that the property should be used only as a golf course.

7. That lease was extended until April 20, 1955, and on April 20, 1955, it was extended for another term of three years, which term will expire April 20, 1958.

8. The rental due the school board at the rate of $1,000.00 a year has been paid, and for several years past it has been allocated equally between the Senior High School and the Dudley High School for their respective athletic programs.

(See paragraph 15(b) of the school board's answer and the stipulation relating thereto.)

9. The North Carolina General Assembly of 1949 validated the lease dated April 1, 1947, from the school board to the city covering a portion of the golf course and specifically authorized the school board to lease any real property owned by the board and which, in the opinion of the board, would not be needed for school purposes, but in no case for a term exceeding five years, with a further provision that any such original lease might contain a provision for the extension or renewal thereof, with the approval of the board for an additional term not exceeding five years. The act also provided that any such lease might be made privately by the school board or publicly after such notice in such manner and for such length of time as might be prescribed by the board.

(See paragraph 15(b) of the school board's answer and the stipulation relating thereto.)

10. Neither the lease of April 19, 1949, from the school board to the golf club nor either of the two extensions thereof by which it has been continued in effect up to the present time contains any provisions restricting the use of the leased

property to citizens of the white race or otherwise limiting the use thereof in such way as to prevent its use by the plaintiffs or the class which they represent.

11. There is no evidence that the school board, or any person or organization acting with the authority, consent, or knowledge of the school board, ever denied the plaintiffs or any of them or any Negro citizen permission to use the golf course, or ever deprived them or any of them of any rights or privileges they may have with respect thereto, but it leased said property for public use as a golf course and its tenant has denied plaintiffs and others of their race, solely on account of their race, the equal privilege of using it. There is an actual controversy between the plaintiffs and the school board and its tenant with respect to the golf course.

12. That the City of Greensboro, with aid from the Works Progress Administration, constructed a nine hole golf course in Gillespie Park, part of which was on land owned by the Greensboro City Board of Education and leased to City of Greensboro;

13. That until 7 April 1949, City of Greensboro operated the Gillespie Park golf course for the use of White Citizens of Greensboro;

14. That City of Greensboro, pursuant to a request from a group of Negro citizens, and upon the recommendation of the Greensboro Recreation Commission, constructed a nine-hole golf course in Nocho Park for the exclusive use of Negro citizens of Greensboro in an effort to follow the doctrine established in Plessy v. Ferguson, 163 U.S. 537.

15. That on April 7, 1949, respectively, City of Greensboro and Greensboro City Board of Education leased the Gillespie Park golf course to Gillespie Park Golf Club, Inc. and that this lease does not require that the golf course be operated by lessee on a racially segregated basis, but does require it to be used as a public golf course, the sole purpose for the lease, the lease is hereby made a part of this finding.

16. That on September 16, 1950, City of Greensboro leased the Nocho Park golf course to Nocho Park Golf Club,

Inc.; and that this lease does not require that the golf course be operated by lessee on a racially segregated basis, but does require it to be used as a public golf course, the sole purpose for the lease, the lease is hereby made a part of this finding.

17. That the leases of the Gillespie Park Course by the City and the school board have been extended from time to time, so that the lease by the city expires on April 6, 1958, unless it is renewed, and the lease by the school board expires on April 20, 1958, unless it is renewed.

18. That this is a class action brought under and pursuant to Rule 23 of the Federal Rules of Civil Procedure.

19. That each of the plaintiffs is an adult Negro citizen of the United States, and of the State of North Carolina, residing in the City of Greensboro, North Carolina; that the defendant City of Greensboro is a municipal corporation, duly organized and existing under the Constitution and laws of North Carolina; that the defendant Greensboro City Board of Education, is a body politic and corporate, duly organized and existing under the Constitution and laws of North Carolina; that the defendant Gillespie Park Golf Club, Incorporated, is a body corporate, incorporated under the laws of the State of North Carolina, having received its charter on March 26, 1949.

20. On the 15th day of February, 1940, the defendant City of Greensboro and the defendant Greensboro City Board of Education entered into an agreement with the Government of the United States for the construction of a golf course on land, part of which was owned by the City of Greensboro and part by the Greensboro City Board of Education, under which agreement the United States Government provided 65% of the cost of constructing said golf course. That in order to induce the United States Government to provide 65% of the cost, the defendants City of Greensboro and Greensboro City Board of Education agreed with the United States Government that (1) this golf course was "for the use or benefit of the public." (2) that the City of Greensboro would maintain and operate said golf course

for the use and benefit of the public during the useful life of said golf course and (3) that said golf course would not "be leased, sold, donated, or otherwise disposed of to a private individual or corporation, or quasi-public corporation, during the useful life of" said golf course. Said golf course became known as the Gillespie Park Golf Course and is the golf course involved in this action.

21. That the City of Greensboro operated the Gillespie Park Golf Course from 1941 until 1949 for the comfort and convenience of white citizens only.

22. That on or about February 1, 1949, the plaintiff, Arthur Lee, Jr., together with three other Negro citizens of the City of Greensboro, sought the use of the facilities of Gillespie Park Golf Course and were denied said use.

23. On or about February 15, 1949, representatives of the Greensboro Men's Club, an organization of Negro citizens of the City of Greensboro, appeared before the City Council of the City of Greensboro and requested that Negro Citizens be given the right to play golf at the Gillespie Park Golf Course in as much as the city provided no facilities for Negro golfers.

24. That on or about February 17, 1949, a group of Negro citizens of the City of Greensboro appeared before the City Parks and Recreation Commission and requested the use of all of the facilities at the Gillespie Park Golf Course. On March 2, 1949, the City Parks and Recreation Commission adopted a resolution recommending to the City Council of Greensboro "that the City of Greensboro provide golf facilities for the exclusive use of Negro citizens" and that "the golf course located off Asheboro Street, now used by White not be used by Negroes." That the resolution embodying these recommendations was presented to the City Council of Greensboro on March 15, 1949 by John R. Hughes, Chairman of the Greensboro Parks and Recreation Commission and that the recommendations were approved by the City Council on said date.

25. That the Greensboro Parks and Recreation Commission formulates a park and recreation program for the City and

serves the City in an advisory capacity in the formulation of park and recreation budget and policy.

26. That the said John R. Hughes who appeared before the City Council on March 15, 1949 became the chief promoter and prime negotiator of the leases involved in this case. That at the first meeting of the Board of Directors of the corporation he was "authorized and directed to meet with the Greensboro City Council and to have full authority to act on behalf of the corporation in securing a lease of the club house, golf equipment, and as much land as might be leased from the city," and also he "was further instructed and empowered to contact the Greensboro school board and to negotiate an agreement for the lease of the nine-hole golf course on the school property off of Asheboro Street." That the said John R. Hughes did in fact appear before the City Council and the School Board and did persuade them to authorize the leases involved in this case, and at all times involved in these negotiations, the said John R. Hughes was chairman of the Greensboro Parks and Recreation Commission.

27. That the said John R. Hughes who appeared before the City Council on March 15, 1949 became the chief promoter and organizer of the defendant Gillespie Park Golf Club, Inc. That the meetings of the corporation were held in his office and he successively became a director, vice-president, secretary and president of the corporation. That he has been the attorney for the corporation from its inception to the present time.

28. That about seven years have expired under the leases and that during the time a total cumulative membership did not exceed 162 persons, and not more than 60 persons have membership in the corporation at this time. That no meeting of the membership of the corporation has ever been held during the life of the corporation, and that only the members who are also on the board of directors have any voice in the affairs of the corporation. That the board of directors under the by-laws of the corporation is constituted of seven self-perpetuating members who have the sole power and authority to approve persons for membership and to amend or change

the by-laws. That no formal, recorded vote by the board of directors has ever been taken approving any person or persons as members and no meeting held for this purpose, all members appearing on the roll having been approved by telephone conversations between the Golf Professional and an undetermined number of the members of the board of directors.

29. That all of the funds which have been paid out for operating the golf course under the leases have ultimately come from income which the City would have received direct except for the existence of the leases, and that the members and directors of the corporation have not invested a single cent of their own money in the corporation, while at the same time some of them have profited through compensation as officers and employees of the corporation. That during the life of the lease, funds of the defendant City of Greensboro from sources other than the golf course have been invested in the property.

30. That the leases in this case undertook to turn over to a corporation having no assets or income highly v a l u a b l e income-producing property belonging to the City and the school board, the chief officer and promoter of said corporation being an official of the city, and the city having no prospect of getting anything from said leases except out of the income which the leased property was already bringing in, and with the city reserving the right to put into the property further investments from other sources than said income and that under these circumstances said corporation was in fact an agency of the city and the school board for the continued maintenance and operation of the golf course for the convenience of the citizens of Greensboro.

31. That at no time has the City Council of the City of Greensboro either by resolution or by any statement in the leases or in any other formal way, made a finding that this golf course "in the judament of the City Council will not be needed by the City within a period of ten years."

32. While the defendants disclaimed before the court any intent to exclude Negroes from using Gillespie Park Golf

Course they assumed that they have the right to exclude Negroes if they wish to do so, and it is a fact that no Negro has ever been permitted the privilege of playing on the golf course.

33. White citizens of Greensboro are given the privilege of becoming permanent members by paying $60.00 per year without greens fees and others not permanent members by paying $1.00 per year and greens fees of $.75, except on holidays and weekends, when it is more. On days other than holidays or weekends when greens fees are $1.25 white citizens are permitted to play without being members by paying the fees above set forth and without paying the extra $1.00 and without any questions being put to them.

When the plaintiffs applied to be given the same privilege they were refused on the ground that they were not members but primarily because of their color. Plaintiffs laid the greens fees on the table in the club house, went out to play and after they had gotten to the 3rd hole the "pro" in charge of the golf course ordered them off and they insisted that they had a right to play and would not get off unless they were arrested by an officer, whereupon the "pro" had them arrested and they were tried and convicted and sentenced to imprisonment for a period of 30 days, which is the maximum under the law for the State of North Carolina for trespassing.

APPENDIX "F"

CONCLUSIONS OF LAW

1. The court has jurisdiction of the parties and the subject matter of this action. Title 28 U.S.C.A., Sections 2201 and 1343, this action arising under the Constitution and laws of the United States and seeks redress for the deprivation of civil rights guaranteed by the Fourteenth Amendment.

2. That the plaintiffs and other Negroes similarly situated cannot be denied, on account of race, the equal privileges to the park, notwithstanding the lease.

3. The said agreement between the City of Greensboro, the Greensboro City Board of Education, and the United States Government imposed a duty upon the defendants in this case to maintain and operate the Gillespie Park Golf Course during its useful life for the benefit of public, including the Negro public, and that duty could not be voided by the execution of the leases involved in this case.

4. Under the existing lease from the school board the golf club took the school board's portion of the golf course subject to all applicable provisions of law.

5. The school board was not required as a matter of law to include in the lease to the golf club any provision to the effect that in the operation of the golf course there should be no discrimination between the races.

6. The lease from the school board to the golf club is not made invalid by reason of the omission in the lease of any requirement that the golf club comply with the law.

7. That the City of Greensboro has the power to lease land which it owns, for a period not exceeding ten years, under Section 79(e) of Chapter 37, Private Laws of North Carolina, 1923;

8. That City of Greensboro is not required by law, statu-

tory or otherwise, to provide golfing facilities for the use of its citizens; but when it provides such facilities for the citizens, it cannot deny the privilege to Negroes solely because of their race.

This the 24th day of April, 1957.

/s/ Johnson J. Hayes
United States District Judge.

APPENDIX "G"

DECREE AND INJUNCTION:

This cause coming on for hearing and the court having heard the evidence and argument of counsel and carefully considered the same and the briefs filed, and having made the findings of fact and conclusions of law which appear of record:

It is now ORDERED, ADJUDGED and DECREED that defendants have unlawfully denied the plaintiffs as residents of the City of Greensboro, N. C. the privileges of using the Gillespie Park Golf Course, and that this was done solely because of the race and color of the plaintiffs, and constitutes a denial of their constitutional rights, and unless restrained, will continue to deny plaintiffs and others similarly situated:

And be it further ORDERED, ADJUDGED and DECREED:

1. The defendants and each of them, and the officials, servants and employees of each of said defendants are hereby forever restrained and enjoined from disposing of the public property described and used as the Gillespie Park Golf Course, except by a bona fide sale.

Reservation. This court will retain jurisdiction and the power to modify this paragraph upon application and on ten days notice to the plaintiff.

2. The defendants and each of them, and the officers, agents, servants and employees of each of said defendants are hereby forever restrained and enjoined against any discrimination against the plaintiffs or any other Negro resident of the City of Greensboro in the use of said golf course; No restrictions or conditions shall be imposed against the Negroes except those imposed against the White residents of the City of Greensboro. This paragraph shall become effective 40 days after this decree is filed in the office of the Clerk of this court at Greensboro.

3. The application by the City of Greensboro and the Gillespie Park Golf Club, Inc., for a stay pending appeal is

denied because of the delay of the effective date of paragraph 2 hereof, in which time the defendants can apply to the Circuit Court for a stay. It has been known by the defendants since March 18, 1957, that the decree would be entered and time was allowed by the court for the parties to agree on a date, as this court was unwilling to deny the plaintiffs their constitutional rights except by their consent.

Except as stated above this decree shall take effect upon its filing in the office of the Clerk of this court at Greensboro, N. C.

It is ORDERED that the costs be taxed against the defendants City of Greensboro and The Gillespie Park Golf Club, Inc. No cost is to be taxed against the School Board because it had leased the property to the City and the City induced the School Board to transfer the lease to the Golf Club. It does not appear that the School Board promoted or encouraged the discriminatory conduct of the co-defendants.

Entered April 24, 1957.

/s/ Johnson J. Hayes
U. S. District Judge.